

No. 12907

United States
Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, AFFILI-
ATED WITH THE CONGRESS OF
INDUSTRIAL ORGANIZATIONS; INTER-
NATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, DISTRICT
No. 1, Acting on Behalf of SHIP CLERKS
ASSOCIATION, LOCAL 34 and LOCAL 34:
MARINE CLERKS ASSOCIATION, LOCAL
1-63, and SUPERCARGOES AND CHECK-
ERS UNION, LOCAL 40, Each Affiliated
with the INTERNATIONAL LONGSHORE-
MEN'S & WAREHOUSEMEN'S UNION,
C.I.O.,

Respondents.

Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board

FILED

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PAUL P. O'BRIEN

CLERK

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ERS UNION, LOCAL 40, Each Affiliated
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

PAGE

Answer (Exhibit No. 1-D).....	15
Answer to Amendment to Complaint (Exhibit No. 1-U).....	29
Answer to Petition for Enforcement of an Order of the N.L.R.B., and Petition for Review of Said Order.....	390
Appearances	1
Certificate of the National Labor Relations Board	375
Complaint (Exhibit No. 1).....	3
Decision and Order.....	33
Appendix A.....	45
Order	40
The Remedy.....	39
Exhibits, General Counsel's:	
No. 1 —Complaint	3
1-D—Answer	15
1-E—Motion for Leave to Amend Complaint and Amendment.....	21

INDEX

PAGE

Exhibits, General Counsel's—(Continued):

No. 1-G—Supplemental Answer.....	23
1-P—Motion for Leave to Amend Complaint and Amendment.....	25
1-U—Answer to Amendment to Com- plaint	29
2 —Agreement	243
6 —Letter dated February 13, 1948..	247
44 —Agreement—Working and Dis- patching Rules of the Port of San Francisco, April, 1944.....	297
55 —Employers Memorandum Given to Union for Meeting, August 28, 1948	340
60 —Letter dated August 30, 1948....	342
62 —Letter dated August 31, 1948....	350
72 —Agreement dated December 6, 1948	361
73 —Master Agreement for Clerks and Checkers, and Port Supple- mentary Agreement, dated Janu- ary 17, 1949.....	366
73-B—Port Supplement Agreement and Working Rules, Checkers, Su- pervisors and Supercargoes, dated March 28, 1949.....	370

INDEX

PAGE

Intermediate Report and Recommended Order..	47
Appendix A.....	200
Appendix B.....	213
Conclusions of Law.....	188
Findings of Fact.....	65
Recommendations	191
Statement of the Case.....	47
Motion for Leave to Amend Complaint and Amendment (Exhibit No. 1-E).....	21
Motion for Leave to Amend Complaint and Amendment (Exhibit No. 1-P).....	25
Order to Show Cause.....	395
Petition for Enforcement of an Order of the N.L.R.B.	382
Proceedings	219
Statement of Points Upon Which Petitioner Intends to Rely.....	394
Supplemental Answer (Exhibit No. 1-G).....	23
Witnesses, General Counsel's:	
Clark, Henry W.	
—direct	241, 252, 259, 339
—cross	257

Witnesses, General Counsel's—(Continued):

Ebey, Ellison

—direct	366
—cross	337

Ferguson, Russell E.

—direct	332
—redirect	334
—recross	333, 334

Gregory, F. C.

—direct	263, 275, 316
—voir dire	273
—cross	330

Robertson, James A.

—direct	226
—cross	240

Stow, A. E.

—direct	338
—cross	338

Witness, Respondents':

Fairley, Lincoln

—direct	356
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United States of America Before the National
Labor Relations Board, Twentieth Region

Case No. 20-CB-19

In the Matter of

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, Affiliated with
the CONGRESS OF INDUSTRIAL ORGAN-
IZATIONS

and

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST

Case No. 20-CB-38

In the Matter of

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, DISTRICT
No. 1, Acting on Behalf of SHIP CLERKS
ASSOCIATION, LOCAL 34, and LOCAL 34;
MARINE CLERKS ASSOCIATION, LOCAL
1-63, and LOCAL 1-40, Each Affiliated with IN-
TERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, C.I.O.

and

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST

COMPLAINT

It having been charged by the Waterfront Em-
ployers Association of the Pacific Coast, an em-

ployer association, that the International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, and its affiliated locals, namely, International Longshoremen's and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34; Marine Clerks Association, Local 1-63; and Local 1-40, herein collectively referred to as respondents, have engaged and are engaging in unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C.A. 141 et seq. (Supp. July 1947), herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twentieth Region, designated by the Rules and Regulations of the National Labor Relations Board, Series 5, Section 203.15, hereby issues this Complaint upon charges duly consolidated pursuant to the provisions of Section 203.33, of the above Rules and Regulations, and alleges as follows:

I.

Waterfront Employers Association of the Pacific Coast, herein called WEA, a corporation, is and has been at all times material hereto designated by shipping, stevedore and terminal companies whose names are listed in Appendix "A" as their agent for the purposes of bargaining collectively with labor organizations concerning rates of pay, wages, hours or employment, and other conditions of em-

employment of their respective employees in the unit described in paragraph IV below.

(a) Waterfront Employers Association of California, a corporation, is an employer association, acting in concert with WEA and administering the policies of WEA in the State of California, and is and has been at all times material hereto designated by the companies listed in Appendix "A" as their agent for the purposes of bargaining collectively with labor organizations for their respective employees in the units described in paragraphs VII and VIII below.

(b) Waterfront Employers Association of Portland, a corporation, is an employer association, acting in concert with WEA and administering the policies of WEA in the State of Oregon and is and has been at all times material hereto designated by the companies listed in Appendix "A" as their agent for the purposes of bargaining collectively with labor organizations for their respective employees in the unit described in paragraph IX below.

II.

Each of the companies listed in Appendix "A" is engaged in the loading, unloading, or handling of waterborne cargo at various ports on the Pacific coast. Each of said companies, in the course and conduct of its operations as aforesaid, loads, unloads or handles a substantial amount of cargo in the course of transportation between various states of the United States, between the United States and

non-contiguous territories or possessions and between the United States and foreign countries.

III.

International Longshoremen's and Warehousemen's Union, C.I.O., herein called ILWU, and its locals, namely, International Longshoremen's and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34, herein called Local 34; Marine Clerks Association, Local No. 1-63, herein called Local 1-63, and Local 1-40, are labor organizations within the meaning of Section 2, subsection (5) of the Act.

IV.

In order to insure to the employees of the companies, members of WEA, whose names appear in Appendix "A," the full benefit of their right to self-organization and collective bargaining and otherwise to effectuate the policies of the Act, all employees doing longshore work, including longshoremen, gang bosses, hatch tenders, winch drivers, donkey drivers, boom men, burton men, sack turners, side runners, front men, jitney drivers and lift jitney drivers employed by said companies constitute, and at all times material herein did constitute, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subsection (b) of the Act.

V.

On and before June 6, 1947, a majority of the employees in the unit described in paragraph IV

above, had designated the ILWU as their representative for the purposes of collective bargaining with WEA representing the companies listed in Appendix "A." The ILWU is, and at all times material hereto has been, the exclusive representative of all the employees in the above-described unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

VI.

At various times since about February 21, 1948, during bargaining negotiations between the ILWU and the WEA with respect to a new collective bargaining agreement covering the employees in the unit set forth in paragraph IV above, the ILWU in the course of such negotiations demanded and insisted that the WEA agree to and execute a new collective bargaining contract with the ILWU providing, among other terms, that:

Section 4. The hiring of all longshoremen shall be through halls maintained and operated jointly by the International Longshoremen's and Warehousemen's Union and the respective employers' associations. The hiring and dispatching of all longshoremen shall be done through one central hiring hall in each of the ports of Seattle, Portland, San Francisco and Los Angeles, with such branch halls as the Labor Relations Committee, provided for in Section 9, shall decide. A branch hiring hall shall be opened in the East Bay area of San Francisco Harbor. All expense of the hiring halls shall be

borne one-half by the International Longshoremen's and Warehousemen's Union and one-half by the employers. Each longshoreman registered at any hiring hall who is not a member of the International Longshoremen's and Warehousemen's Union shall pay to the Labor Relations Committee toward the support of the hall a sum equal to the pro rata share of the expense of the support of the hall paid by each member of the International Longshoremen's and Warehousemen's Union.

Section 5. The personnel for each hiring hall, with the exception of dispatchers, shall be determined and appointed by the Labor Relations Committee of the port. Dispatchers shall be selected by the Union through elections in which all candidates shall qualify according to standards prescribed and measured by the Labor Relations Committee of the port. If they fail to agree on the appropriate standards or on whether a candidate is qualified under the standards, the dispute shall be decided by the Impartial Chairman or, at his discretion, by a Port Arbitrator.

Dispatchers shall hold office for one year and neither the constitution nor any rule of the Union or any of its locals shall abridge the right of a dispatcher to hold office for one year or to run to succeed himself as often as he may choose.

Both the Employers and the Union shall be permitted to maintain a representative in each hiring hall at all times.

Section 10. Subject to the control and direction of the Coast Labor Relations Committee, the duties of the Port Labor Relations Committee shall be:

(a) To maintain and operate the hiring hall;

(b) To have complete control of the registration lists of the regular Longshoremen of the Port including the power to make such additional registrations of the longshoremen as may be necessary; no longshoremen not on such a list shall be dispatched from the hiring hall or employed by any employer while there is any man on the registered list qualified, ready and willing to do the work;

(c) To decide questions regarding rotation of gangs and extra men; revision of existing lists of extra men and of casuals; and the addition of new men to the industry when needed;

(d) To investigate and adjudicate all grievances and disputes relating to working agreements;

(e) To decide all grievances relating to discharges. The hearing and investigation of grievances relating to discharges shall be given preference over all other business before the Committee. In case of discharge without sufficient cause, the Committee may order payment for lost time or reinstatement with or without payment for lost time;

(f) To decide any other question of mutual concern relating to the industry and not covered by this agreement.

VII.

In order to insure to the employees of the com-

panies, members of the Waterfront Employers Association of California, whose names appear in Appendix "A," the full benefit of their right to self-organization and collective bargaining and otherwise to effectuate the policies of the Act, all clerical workers, exclusive of supervisory employees, who receive, deliver, check the loading or discharging, or spot ship's cargo to or from marine terminals, employed in the San Francisco Bay Area, constitute, and at all times material hereto did constitute, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subsection (b) of the Act.

(a) On and before March 30, 1946, a majority of the employees in the above unit had designated Local 34 as their representative for the purposes of collective bargaining with the Waterfront Employers Association of California. Local 34 is, and at all times material hereto has been, the exclusive representative of all the employees in the above described unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

VIII.

In order to insure to the employees of the companies, members of the Waterfront Employers Association of California, whose names appear in Appendix "A," the full benefit of their right to self-organization and collective bargaining and otherwise to effectuate the policies of the Act, all dock checkers, tally clerks, coopers, spotters, and hatch

watchmen, exclusive of supervisory employees, employed in the Los Angeles-Long Beach Harbor area, constitute, and at all times material hereto did constitute, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subsection (b) of the Act.

(a) On and before November 26, 1946, a majority of the employees in the above unit had designated Local 1-63 as their representative for the purposes of collective bargaining with the Waterfront Employers Association of California. Local 1-63 is and at all times material hereto has been, the exclusive representative of all the employees in the above described unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

IX.

In order to insure to the employees of the companies, members of the Waterfront Employers Association of Portland, whose names appear in Appendix "A," the full benefit of their right to self-organization and collective bargaining and otherwise to effectuate the policies of the Act, all checkers, exclusive of supervisory employees, employed in the Oregon-Columbia River District, constitute, and at all times material hereto did constitute, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subsection (b) of the Act.

(a) On and before July 26, 1946, a majority of the employees in the above unit had designated

Local 1-40 as their representative for the purposes of collective bargaining with the Waterfront Employers Association of Portland. Local 1-40 is, and at all times material hereto has been, the exclusive representative of all the employees in the above described unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

X.

At various times since about April 13, 1948, during bargaining negotiations between the ILWU, its affiliated locals and the WEA and/or the Waterfront Employers Association of California and Waterfront Employers Association of Portland with respect to new collective bargaining agreements covering the employees in the units set forth in paragraphs VIII and IX above, the ILWU and its affiliated locals in the course of such negotiations demanded and insisted that the WEA and/or the Waterfront Employers Association of California and Waterfront Employers Association of Portland agree and execute a new collective bargaining contract with the ILWU and its affiliated locals providing, among other terms, for the hiring of employees through hiring hall procedures under the supervision of a union dispatcher, said demand being in substantially the same terms as set forth in paragraph VI above.

XI.

Because of the refusal and failure of the WEA and Waterfront Employers Association of Califor-

nia and Waterfront Employers Association of Portland to agree to the aforementioned demands of respondents, set forth in paragraphs VI and X above, and in order to force the above-named associations to yield to said demands, respondents, about April and May, 1948, directed, instigated, inspired, induced and encouraged employees to engage in a strike or a concerted refusal to perform services for the companies named in Appendix "A" on and after June 15, 1948, the expiration date of the last collective bargaining agreements between respondents and the aforementioned associations. Said respondents were restrained from engaging in such action by the District Court of the United States for the Northern District of California through the issuance of appropriate injunctive relief, pursuant to the provisions of the Act.

XII.

By the acts set forth in paragraphs VI, X and XI hereof, respondents did attempt to cause, and are attempting to cause, the companies named in appendix "A" to discriminate against employees in violation of subsection (3) of Section 8 (a) of the Act, and did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

XIII.

By the acts set forth in paragraphs VI, X and XI hereof, respondents did refuse, and are refusing, to bargain collectively with the WEA and/or the Waterfront Employers Association of California

and Waterfront Employers Association of Portland within the meaning of Section 8 (b) (3) of the Act, and thereby did engage in and are engaging in unfair labor practices within the meaning of said Section 8 (b) (3).

XIV.

By the acts set forth in paragraphs VI, X and XI hereof, respondents did restrain and coerce, and are restraining and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8(b) (1) (A) of the Act.

XV.

The acts of respondents, set forth in paragraphs X and XI hereof, occurring in connection with the operations of the companies, set forth in paragraph II hereof, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XVI.

The acts of respondents, set forth in paragraphs VI, X and XI hereof, constitute unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A), (2) and (3), and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by

the Regional Director for the Twentieth Region, on this 20th day of August, 1948, issues this Complaint against International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, and International Longshoremen's and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local 1-63, and Local 1-40, each affiliated with International Longshoremen's and Warehousemen's Union, C.I.O., respondents herein.

[Seal] /s/ GERALD A. BROWN,
 Regional Director, National
 Labor Relations Board.

[Admitted in evidence as General Counsel's Exhibit No. 1, September 1, 1948.]

[Title of Board and Cause.]

ANSWER

Come now the respondents herein and pursuant to § 203.20 of the rules and regulations of the National Labor Relations Board file this, their answer to the complaint on file herein, and in support hereof allege as follows:

I.

Answering all of the allegations of paragraphs and II of the said complaint, respondents state that they are without knowledge of the matters

therein contained, and basing their answer thereon, deny the said allegations and demand strict proof thereof.

II.

Respondents deny each and every, all and singular the allegations of paragraph VII of the said complaint, beginning with the words "in order to insure" and ending with the words "Subsection (b) of the Act," and in connection therewith assert that the unit appropriate for collective bargaining for the employees in said paragraph referred to is the unit described in the decision of Elections and Order issued by the National Labor Relations Board on September 28, 1946, in Case No. 20-R-1690, reported at 71 N.L.R.B. 121.

III.

Respondents deny each and every, all and singular the allegations of paragraph VIII of the said complaint, beginning with the words "In order to insure" and ending with the words "Subsection (b) of the Act," and in connection therewith assert that the unit appropriate for collective bargaining for the employees in said paragraph referred to is the unit described in the decision of Elections and Order issued by the National Labor Relations Board on September 28, 1946, in Case No. 20-R-1690, reported at 71 N.L.R.B. 121.

IV.

Respondents deny each and every, all and singular the allegations of paragraph IX of the said complaint, beginning with the words "In order to

insure" and ending with the words "Subsection (b) of the Act," and in connection therewith assert that the unit appropriate for collective bargaining for the employees in said paragraph referred to is the unit described in the decision of Elections and Order issued by the National Labor Relations Board on September 28, 1946, in Case No. 20-R-1690, reported at 71 N.L.R.B. 121.

V.

Respondents deny each and every, all and singular, generally and specifically, the allegations of paragraphs VI, X, XI, XII, XIII, XIV, XV and XVI of said complaint and demand strict proof thereof.

As and for a Separate, Affirmative Defense, respondents allege:

I.

The provisions of §§ 8 (a) (3) and 8 (b) (2) of the National Labor Relations Act, as amended, and said provisions as construed and applied herein impose unreasonable limitations upon respondents' freedom of contract and constitute an invasion of their property rights and of the rights of their members to freedom of speech, press and assembly, and of their right to be free from involuntary servitude, thereby depriving respondents and their members of liberty and property without due process of law, all in violation of the First, Fifth and Thirteenth Amendments to the Constitution of the United States.

II.

The aforesaid sections, and the aforesaid sections as construed and applied, are unreasonable, arbitrary and capricious and have no reasonable relation to the objectives and purposes of the Act, and to the objectives and purposes of collective bargaining and to the objectives and purposes of maintaining commerce free from interference, but on the contrary are so designed and are so sought to be enforced by the National Labor Relations Board as to make impossible the continuation of trade union organization in the stevedoring industry and in the loading, unloading and handling of waterborne cargo, and to abridge and to destroy the rights of employees in the said industry to effective collective bargaining and to deprive the respondents and their members of their liberty and property and to impose involuntary servitude upon them, all in violation of the First, Fifth and Thirteenth Amendments to the Constitution of the United States.

III.

The provisions of §§ 8 (a) (3) and 8 (b) (2) of the Act are void and unenforceable in that they violate on their face the provisions of the First, Fifth and Thirteenth Amendments to the Constitution of the United States by interfering with the freedom of association and of assembly and of speech and of the right of contract and to work of the respondent Unions and the members thereof, by imposing or seeking to impose involuntary servitude upon them.

IV.

As construed and applied, the provisions of §§ 8 (a) (3), 8 (b) (2), 8 (b) (3) and 8 (b) (1) (A) of the said Act are void and unenforceable in that they abridge, or threaten to abridge the right of the respondent Unions and of the members thereof to the free exercise of the rights of free speech, press and assembly, and their right to contract freely for their services and to be free of involuntary servitude, and thus deprive them of liberty and property without due process of law, all in violation of the First, Fifth and Thirteenth Amendments to the Constitution of the United States.

V.

As construed and applied herein, the provisions of §§ 8 (a) (3), 8 (b) (2), 8 (b) (3) and 8 (b) (1) (A) of the said Act constitute a denial of the equal protection of the laws to the respondents herein, in that the said provisions of the said Act are being discriminatorily applied to said respondents and are not being applied to other labor organizations of the same class, character and nature of respondents, who are and have been engaged in the same acts and practices as in the complaint set forth; this discriminatory application of the provisions of the statute is with the knowledge, consent and connivance of the National Labor Relations Board, its agents, officers and attorneys.

Wherefore, respondents pray that the said complaint be dismissed.

Dated September 1, 1948.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

By /s/ NORMAN LEONARD,
Attorneys for Respondents.

State of California,
City and County of San Francisco—ss.

Norman Leonard, being first duly sworn, deposes and says:

That he is one of the attorneys for the respondents herein. That he has read the foregoing Answer and knows the contents thereof. That the same is true of his own knowledge, except as to matters therein stated on information or belief; and as to those matters, that he believes it to be true.

/s/ NORMAN LEONARD.

Subscribed and sworn to before me this 1st day of September, 1948.

[Seal] /s/ ALICE C. MORSE,
Notary Public in and for the City and County of
San Francisco, State of California.

[Admitted in evidence as General Counsel's Exhibit No. 1-D, September 1, 1948.]

[Title of Board and Cause.]

MOTION FOR LEAVE TO AMEND
COMPLAINT AND AMENDMENT

Comes now counsel for the General Counsel of the National Labor Relations Board and moves for leave to amend the Complaint issues herein by adding thereto paragraphs VI (a) and X (a), as follows:

VI.

(a) The foregoing provision demanded by the I.L.W.U. providing for the hiring of longshoremen through the hiring hall is illegal for the reason that the practices and procedures of the hiring hall in its practical operation are discriminatory in that:

(1) The hiring of all longshoremen must be through the hiring hall operated jointly by the I.L.W.U. and the Employers' Associations.

(2) The dispatching of longshoremen for employment is under the supervision and control of a dispatcher selected by the I.L.W.U.

(3) The Port Labor Relations Committee, composed of an equal number of Employers' Associations and I.L.W.U. representatives, exercises complete control over registration lists of regular longshoremen, including the addition of new persons to the lists.

(4) No longshoreman or applicant for employment is dispatched from the hiring hall or employed

by any employer while there are men on the registered list qualified, ready and willing to work.

(5) Each longshoreman registered upon the lists who is not a member of the I.L.W.U. must contribute to the support of the hiring hall an amount equivalent to that paid by each member of the I.L.W.U.

X.

(a) The provision demanded by the I.L.W.U. providing for the hiring of employees in the units described in paragraphs VII, VIII and IX, through the hiring hall is illegal for the reason that the practices and procedures of the hiring hall in its practical operation are substantially the same as those set forth in paragraph VI (a) and therefore discriminatory.

/s/ REEVES R. HILTON,
Counsel for the General Counsel of the National
Labor Relations Board.

Dated September 3, 1948.

[Admitted in evidence as General Counsel's Exhibit No. 1-E, September 3, 1948.]

[Title of Board and Cause.]

SUPPLEMENTAL ANSWER

Come now the respondents herein and file this, their Supplemental Answer to the Complaint on file herein, and in support thereof allege as follows:

I.

Incorporate herein by reference all of the Answers heretofore filed herein by the respondents on September 1, 1948.

II.

Answering the allegations of Paragraphs VI(a) and X(a) of the said Complaint, as the said Paragraphs were added thereto by the Amendment of September 3, 1948, respondents deny each and every, all and singular, generally and specifically, the allegations of the said Paragraphs and demand strict proof thereof.

As and for a Separate, Further, and Affirmative Defense, Respondents Allege:

I.

That since the issuance of the Complaint herein, more particularly, since on or about the second day of September, 1948, and continuously thereafter to the date hereof, the Waterfront Employers Association of the Pacific Coast has engaged in, and is engaging in, unfair labor practices within the meaning, among others, of §8(a) 5 of the National Labor Relations Act, as amended, by failing

and refusing to bargain collectively with the respondents, or any of them.

II.

That by the acts set forth in the foregoing Paragraph, the Waterfront Employers Association of the Pacific Coast are restraining and coercing employees in the exercise of the rights guaranteed in §7 of the Act and thereby engaging in unfair labor practices within the meaning of §8(a) 1 of the Act.

Wherefore, respondents pray that the said Complaint, together with its Amendment, be dismissed, and for such other and further relief as to the National Labor Relations Board may seem just and proper in the premises.

Dated: September 10, 1948.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

By /s/ NORMAN LEONARD,
Attorneys for Respondents.

State of California,
City and County of San Francisco—ss.

Norman Leonard, being first duly sworn, deposes and says:

That he is one of the attorneys for the respondents herein; that he has read the foregoing Supplemental Answer and knows the contents thereof; that the same is true of his own knowledge, except

as to matters therein stated on information or belief; and as to those matters, that he believes it to be true.

/s/ NORMAN LEONARD.

Subscribed and sworn to before me this 13th day of September, 1948.

[Seal] /s/ ALICE C. MORSE,
Notary Public in and for the City and County of
San Francisco, State of California.

[Admitted in evidence as General Counsel's Exhibit No. 1-G. September 15, 1948.]

[Title of Board and Cause.]

MOTION FOR LEAVE TO AMEND
COMPLAINT AND AMENDMENT

To the Honorable Irving Rogosin, Trial Examiner,
c/o Chief Trial Examiner, National Labor Relations Board, Washington, D. C.:

Comes now counsel for the General Counsel of the National Labor Relations Board and, pursuant to Section 203.17 of the Rules and Regulations of the National Labor Relations Board, moves the Trial Examiner for leave to further amend the Complaint issued in this matter on August 20, 1948, as amended September 3 and 21, 1948, by adding to the allegations contained therein the following paragraphs to appear following paragraphs VI and X of the

Complaint, as amended, to be numbered paragraphs VI (b) and (c) and X (b) and (c), respectively, as follows:

VI (b)

On or about December 1, 1948 WEA yielded to the demands and insistence of the ILWU in order to terminate the strike which had been in effect since September 2, 1948, as set forth in paragraph XI (b) of the Complaint as amended, and the members of the ILWU thereupon returned to work about December 6, 1948. Thereafter, about December 17, 1948, WEA executed an agreement with the ILWU, copy of which is attached hereto, which agreement contains provisions relating to the registration, hiring and dispatching of longshoremen, in substantially the same terms as demanded by the ILWU, as set forth in para. VI of the Complaint, as amended, and in addition provides that preference of employment shall be given to members of the ILWU. Since about December 6, 1948, the employment of longshoremen has been governed and controlled according to the terms of said agreement. The provisions of said agreement relating to the registration, hiring, dispatching of longshoremen are in practical operation and procedure discriminatory and illegal as set forth in paragraph VI of the Complaint, as amended. The provision granting preference of employment to members of the ILWU is illegal and discriminatory in practical operation and procedure, as well as under the terms of the Act.

VI (c)

Respondents by the conduct described above have restrained and coerced and are restraining and coercing employees of the companies, members of the WEA, in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8, subsection (b) (1) (A) of the Act, and caused and attempted to cause and are causing and attempting to cause WEA and/or its member companies to discriminate against employees in violation of Section 8, subsection (a) (3) of the Act, and did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8, subsection (b) (2) of the Act.

X (b)

On or about December 1, 1948, WEA and/or Waterfront Employers Association of California and Waterfront Employers of Oregon and Columbia River yielded to the demands and insistence of the ILWU in order to terminate the strike which had been in effect since September 2, 1948, as set forth in paragraph XI (b) of the Complaint, as amended, and agreed with the ILWU, that the registration, hiring and dispatching of ships' clerks or checkers shall be governed and controlled according to the practices and procedures existing prior to June 15, 1948, as set forth in paragraph X of the Complaint, as amended, and in addition thereto agreed that preference of employment shall be given to members of the ILWU. The parties

further agreed that provisions relating to the above terms of employment shall be included in the final agreement to be executed between them. Since about December 6, 1948, the employment of ships' clerks or checkers has been governed and controlled as appears above and the strike terminated. Said provisions relating to the registration, hiring and dispatching of ships' clerks or checkers are in practical operation and procedure discriminating and illegal, as set forth in paragraph X of the Complaint, as amended. The provision granting preference of employment to members of the ILWU is illegal and discriminatory in practical operation and procedure, as well as under the terms of the Act.

X (c)

Respondents by the conduct described above have restrained and coerced and are restraining and coercing employees of the companies, members of the WEA, in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8, subsection (b) (1) (A) of the Act, and caused and attempted to cause and are causing attempting to cause WEA and/or its member companies to discriminate against employees in violation of Section 8, subsection (a) (3) of the Act, and did thereby engage in and are

engaging in unfair labor practices within the meaning of Section 8, subsection (b) (2) of the Act.

Respectfully submitted,

/s/ REEVES R. HILTON,

Counsel for the General Counsel for the National Labor Relations Board.

Dated February 9, 1949.

[Admitted in evidence as General Counsel's Exhibit No. 1-P. April 19, 1949.]

[Title of Board and Cause.]

ANSWER TO AMENDMENT TO COMPLAINT

Come now the respondents herein and file this, their Answer to the Amendment to the Complaint dated February 9, 1949, and allowed by the trial examiner on March 9, 1949, and in support thereof allege as follows:

I.

Incorporate by reference all of the answers heretofore filed by the respondents on September 1, 1948, marked Exhibit 1-d herein, on September 15, 1948, marked Exhibit 1-g herein, and on September 28, 1948, marked Exhibit 1-j herein.

II.

Answering the allegations of paragraphs VI(b) of the said Amendment, respondents deny each and every, all and singular, generally and specifically the allegations of said paragraph and demand strict proof thereof.

III.

Answering the allegations of paragraph VI(c) of the said Amendment, respondents deny each and every, all and singular, generally and specifically the allegations of said paragraph and demand strict proof thereof.

IV.

Answering the allegations of paragraph X(b) of the said Amendment, respondents deny each and every, all and singular, generally and specifically the allegations of said paragraph and demand strict proof thereof.

V.

Answering the allegations of paragraph X(c) of the said Amendment, respondents deny each and every, all and singular, generally and specifically the allegations of said paragraph and demand strict proof thereof.

As and for a Separate, Further and Affirmative Defense and Specifically in Answer to the Allegations of Paragraphs VI(b) and X(b), of Said Amendment, Respondents Allege:

I.

That on or about December 1, 1948, collective bargaining contracts were entered into by and between Pacific American Shipowners Association and American Radio Association, CIO, and by and between Pacific American Shipowners Association and Pacific Coast Marine Firemen, Oilers, Water-tenders and Wipers Association. That the said collective bargaining contracts contain substantially the same provisions with respect to hiring practices

and procedures, registration practices and procedures, preference of employment and other similar matters as are described in paragraphs VI(b) and X(b) of the said amendment to the complaint. That the National Labor Relations Board and its General Counsel and their agents, officers and attorneys are aware of the execution and existence of the aforesaid collective bargaining contracts. That it is a denial of due process of law and of the equal protection of the laws to respondents for the National Labor Relations Board, its General Counsel, and their agents, officers and attorneys wilfully and deliberately to proceed against the alleged contracts of respondents herein while they wilfully and deliberately fail and neglect to proceed against the aforesaid contracts with full knowledge of the execution and existence thereof. That by proceeding herein under the circumstances hereinabove stated, the National Labor Relations Board, its General Counsel, their agents, officers and attorneys, are depriving respondents and each of them of due process of law and of the equal protection of the laws guaranteed to them by the Fifth Amendment to the Constitution of the United States.

II.

That the said Amendment is not based upon any charge, nor upon any charge which was served upon any of the respondents prior to the issuance of the said Amendment, contrary to the provisions of §10(b) of the said Act.

Wherefore, respondents pray that the said complaint, together with its amendment and its sup-

plemental amendment and its amendment be dismissed and for such other and further relief as to the National Labor Relations Board may seem just and proper in the premises.

Dated March 14, 1949.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

By NORMAN LEONARD,
Attorneys for Respondents.

State of California,
City and County of San Francisco—ss.

Norman Leonard, being first duly sworn, deposes and says:

That he is one of the attorneys for respondents in the within action and makes this verification for and on their behalf; that he has read the foregoing Answer to Amendment to Complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on his information or belief, and as to such matters he believes it to be true.

NORMAN LEONARD.

Subscribed and sworn to before me this 14th day of March, 1949.

[Seal] AGNES QUAVE,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires January 14, 1953.

[Admitted in evidence as General Counsel's Exhibit No. 1-U. April 19, 1949.]

United States of America Before the National
Labor Relations Board

Case No. 20-CB-19

In the Matter of

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, Affiliated
with the CONGRESS OF INDUSTRIAL
ORGANIZATIONS

and

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST¹

Case No. 20-CB-38

In the Matter of

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, DISTRICT
No. 1, Acting on Behalf of SHIP CLERKS
ASSOCIATION, LOCAL 34 and LOCAL 34;
MARINE CLERKS ASSOCIATION, LOCAL
1-63, and SUPERCARGOES AND CHECK-
ERS UNION, LOCAL 40, Each Affiliated with
INTERNATIONAL LONGSHOREMEN'S
AND WAREHOUSEMEN'S UNION, C. I. O.

and

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST

¹It appears that, after the hearing in the instant proceeding, the Employers, Waterfront Employers Association of the Pacific Coast, merged or consoli-

DECISION AND ORDER

On November 30, 1949, Trial Examiner Irving Rogosin issued his Intermediate Report in this proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He also found that the Respondents had not engaged in certain other unfair labor practices, and recommended dismissal as to them. Thereafter, the Respondents and the General Counsel filed exceptions, and the Respondents filed a supporting brief. In addition, the Respondents have requested oral argument. This request is denied as the record and brief, in our opinion, adequately present the issues and positions of the parties.²

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.³ The

dated with Pacific American Shipowners Association to form a new organization, the Pacific Maritime Association. See *Pacific Maritime Association*, 89 NLRB No. 115.

²On January 10, 1950, the Respondents moved to reopen the record principally to bring "the collective bargaining history up to date." For the reasons set forth *infra*, the motion is hereby denied.

³The Respondents except, *inter alia*, to the Trial Examiner's denial of the Employers' request of March 29, 1949, for the dismissal of the present cases. Like the Trial Examiner, we are of the opin-

Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions, modifications, and exceptions:

1. The Trial Examiner found, and we agree, that the Respondents violated Section 8 (b) (2) of the Act.

We find it necessary to rely in this connection only on the facts that: (1) The Respondents entered into the coast longshore agreement, dated December 6, 1948, and related contracts⁴ with the Employers containing separate provisions specifi-

ion that the policies of the Act would best be effectuated by a determination of the issues raised herein. Accordingly, we hereby affirm the Trial Examiner's ruling. See *Chicopee Manufacturing Corporation of Georgia*, 85 NLRB No. 226, and *Wine, Liquor & Distillery Workers Union*, 78 NLRB 504, *enfd.* 178 F. 2d 584 (C. A. 2). The Respondents further contend that there was no adequate compliance with Section 10 (b) and that the Board in effect lacks jurisdiction in the instant proceeding. We find no merit in these contentions. The record discloses that copies of the charges were served upon the Respondents with the complaint and we are of the opinion, as concluded by the Trial Examiner, that no jurisdictional defect exists. See *Cathey Lumber Co.*, 86 NLRB No. 30, and *N. L. R. B. v. Itasca Cotton Manufacturing Company*, 179 F. 2d 504 (C. A. 5), *enfg.* 79 NLRB 1442.

⁴Similar contracts concerning the ship clerks and checkers were entered into on January 17, March 11, and March 25, 1949.

cally according preference in employment to members of the Respondents;⁵ and (2) since December 6, 1948, as appears from the stipulation of the parties, the Respondents have participated in the actual enforcement of these provisions, as a result of which members of the Respondents have been given preference in employment over nonmembers.⁶

By thus entering into contracts discriminatorily granting preference in employment to their members, and by actively participating in the enforcement of these provisions, it is clear, and we find, that the Respondents caused the Employers to discriminate against nonmember employees in violation of Section 8 (a) (3) of the Act, thereby violating Section 8 (b) (2).⁷

⁵The separate provision in the coast longshore agreement reads in pertinent part as follows:

Preference of employment shall be given to members of the [ILWU] whenever applicable
* * * both in making additions to the registration list and in dispatching men to jobs.

⁶In its motion to reopen the record, the Respondents did not allege that the parties had in any manner ceased to give effect to the preference provisions.

⁷See *National Maritime Union of America*, 78 NLRB 871, enfd. 175 F. 2d 686 (C.A.2), cert. den. 338 U. S. 954. *American Radio Association*, 82 NLRB 1344; *National Maritime Union of America*, 82 NLRB 1365.

For the reasons set forth in his separate opinion attached hereto, Member Reynolds does not join in the majority decision not to pass upon the legality of the other hiring provisions. His position is

2. Unlike the Trial Examiner, however, we do not find that the Respondents, on and after August 30, 1948, threatened to, or engaged in, strike action to obtain unlawful hiring provisions, or insisted upon such provisions as a condition precedent to any collective bargaining agreement, in contravention of Section 8 (b) (2) and 8 (b) (3) of the Act.

The record clearly shows that on August 28, 1948, when the parties exchanged memoranda on their respective positions, the Respondents, while proposing a continuation of the hiring hall and dispatching procedures, omitted any request for membership preference and proposed instead that preference be granted to registered men, adding: "In making additions to or deletions from the registered list, there shall be no discrimination because of union membership or activities * * *". At the same time, the Employers offered "to continue the present provisions of the contract concerning dispatching halls and preference of employment provisions, subject to the stipulation that, in the event of a legally binding decision of any court on this issue, the whole subject shall be sub-

similar to that considered and fully answered by a majority of the Board in Chicago Newspaper Publishers Association, 86 NLRB No. 116. As the majority held in that case, we are here performing the same sort of function as that performed by a court and we shall adhere to the sound judicial principle that "it is never desirable for a court to go beyond what a decision demands" in disposing of a particular case. *Douds v. Local No. 1250, et al.*, 173 F. 2d 764 (C. A. 2).

ject to renegotiation at the request of either party.”

Thereafter, on August 30 and 31, the Respondents in effect acceded to the Employers' proposal of August 28 with respect to the hiring provisions, differing with the Employers only by requesting that the savings clause be contained in a covering letter, rather than in the contract itself. Although the parties failed to agree on the location of the savings clause before the strike on September 2, it is patent that substantial agreement had been reached on the hiring provisions, and that the subsequent conflict between the parties related not to the hiring provisions, but to the Respondents' economic demands. Certainly, as observed by the Trial Examiner, it would be “unrealistic” to conclude that the Respondents would have engaged in a strike upon the narrow aspect of the location of the savings clause.⁸ And, significantly, the contracts agreed to by the Respondents and the Employers in December, 1948, and thereafter, included such savings clauses as addenda to the contracts, substantially as requested by the Employers prior to the strike.

Under the circumstances, therefore, we find, contrary to the conclusion of the Trial Examiner, that the Respondents on and after August 30, 1948, did not threaten to or engage in strike action to secure

⁸Contrary to the contentions of the General Counsel, we find, as did the Trial Examiner, that the picketing of Army facilities during the strike is not dispositive as to the objects of the strike called by the Respondents against the Employers.

unlawful hiring provisions, nor did the Respondents demand the inclusion of such provisions as a condition precedent to any collective bargaining agreement. Accordingly, we shall dismiss the complaint insofar as it alleges such conduct as violative of Sections 8 (b) (2) and 8 (b) (3).⁹

3. In the absence of exceptions to the Trial Examiner's findings that the Respondents did not violate Section 8 (b) (1) (A) of the Act, we shall dismiss that allegation in the complaint.

The Remedy

The Trial Examiner found that certain provisions of the contracts involved herein, were intrinsically, or in practice, violative of the Act and recommended in this regard that the Respondents cease giving effect to the proscribed provisions. In the absence of exceptions to the scope of such remedy,¹⁰ we shall similarly order that the Respondents cease and desist from giving effect to the contract provisions found unlawful herein, namely, those granting preference in employment to members of the Respondents, and from in any like or related manner causing or attempting to cause the Employers to discrimi-

⁹Cf. *National Maritime Union of America*, 78 NLRB 971, enfd. 175 F. 2d 686 (C. A. 2), cert. den. 338 U. S. 954; and *Santa Ana Lumber Company*, 37 NLRB No. 135.

¹⁰Cf. *Pacific Maritime Association*, *supra*, where exceptions had been filed to the limited order with respect to the contract.

nate against employees in violation of Section 8(a) (3) of the Act.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations; International Longshoremen's and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local 1-63, and Supercargoes and Checkers Union, Local 40, each affiliated with International Longshoremen's and Warehousemen's Union, C. I. O., their officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Giving effect to those provisions of the collective bargaining contracts between the Respondents and the Waterfront Employers Association of the Pacific Coast, on behalf of itself, Waterfront Employers Association of California, and Waterfront Employers of Oregon and Columbia River, and their respective members or successors, which grant preference in employment to members of any of the Respondents;

(b) In any like or related manner causing or attempting to cause the Employers to discriminate

against employees in violation of Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post in conspicuous places copies of the notice attached hereto, marked Appendix A,¹¹ at all places where notices to members are customarily posted. Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondents' representatives, be posted by the Respondents immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken by them to insure that said notices are not altered, defaced, or covered by any other material;

(b) Furnish the Regional Director for the Twentieth Region signed copies of the form of notice attached hereto as Appendix A, for posting, with the consent of the Employers, on bulletin boards at their offices, and in all other places where notices are customarily posted by said Employers. The notices shall be posted for a period of sixty (60) consecutive days thereafter. Copies of said notices, to be furnished by the Regional Director for the Twentieth Region, shall, after being signed

¹¹In the event that this Order is enforced by decree of a United States Court of Appeals there shall be inserted before the words: "A Decision and Order," the words: "A Decree of the United States Court of Appeals Enforcing."

as provided in paragraph 2 (a) hereof, be forthwith returned to the Regional Director for said posting;

(c) Notify the Regional Director for the Twentieth Region, in writing with ten (10) days from the date of this Order what steps the Respondents have taken to comply herewith.

It Is Further Ordered that the complaint, insofar as it alleges that the Respondents, or any of them, have otherwise violated the Act, and it is hereby is, dismissed.

Signed at Washington, D. C., this 20 day of July, 1950.

JOHN M. HOUSTON,
Member.

ABE MURDOCK,
Member,

PAUL L. STYLES,
Member.

[Seal] NATIONAL LABOR
RELATIONS BOARD.

James J. Reynolds, Jr., Member, concurring specially:

I concur in all the specific findings of the majority opinion including the findings that the Respondents violated Section 8 (b) (2) of the Act by entering into the coast longshore agreement with the Employers containing separate provisions spe-

cifically according preference in employment to members of the Respondent, and by enforcing such provisions. However, for substantially the same reasons stated in my concurring opinion in the Chicago Typographical Union¹² case, I cannot concur in the failure of the Board to pass upon allegations in the complaint, and the findings of the Trial Examiner made thereon, that the Respondents violated Section 8 (b) (2) of the Act by executing and giving effect to other hiring hall provisions in the agreement. As pointed out in that opinion, this Board not only has the power to resolve issues arising from such allegations but it is perhaps the only forum for their presentation.

The complaint alleged that the Respondents violated Section 8 (b) (2) of the Act by executing and giving effect to agreement provisions covering (1) the operation of the joint hiring hall, (2) the selection of dispatchers, (3) the dispatching of employees, and (4) the registration of maritime workers, as well as by executing and giving effect to the preferential hiring provisions. The Board is passing upon the legality of only the last allegation. Yet as the Trial Examiner stated, it is clear that the Respondents do not seriously dispute that the provisions for preference of employment by reason of union membership are clearly proscribed by the Act. And, as we state in the majority opinion herein, the Respondents on August 28, 1948, while

¹²Chicago Typographical Union No. 16 and International Typographical Union (Chicago Newspaper Publishers Association), 86 NLRB No. 116.

proposing a continuation of the hiring hall and dispatching procedures, omitted any request for membership preference and proposed instead that preference be granted to registered men. It is therefore apparent that the only issues joined and seriously litigated related to the legality of those aspects of the jointly operated hiring hall which the majority is bypassing. The Respondents are thus ordered to forego a contract clause, the illegality of which is acknowledged while at the same time they remain uninformed with respect to the legality of contract clauses which they vigorously maintain the Act permits, contrary to the contentions of the General Counsel. I cannot subscribe to such an abdication by the Board of its responsibility to the public by leaving problems unsettled which are fraught with possibilities of industrial strife.

Signed at Washington, D. C., this 20 day of July, 1950.

JAMES J. REYNOLDS, JR.,
Member,

NATIONAL LABOR
RELATIONS BOARD.

Appendix A

Notice to All Officers, Representatives, Agents, and Members of International Longshoremen's and Warehousemen's Union: International Longshoremen's and Warehousemen's Union District No. 1; Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local 1-63 and Supercargoes and Checkers Union, Local 40, Each Affiliated with International Longshoremen's and Warehousemen's Union, Affiliated with the Congress of Industrial Organizations

Pursuant to

A Decision and Order

of the National Labor Relations Board, and in order to effectuate the the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not give effect to those provisions of the collective bargaining contracts between the above unions and the Waterfront Employers Association of the Pacific Coast, on behalf of itself, and the other Regional Associations, the said Regional Associations, and their respective members, which grant preference of employment to members in the said unions or any of them.

We Will Not in any like or related manner cause, or attempt to cause, the Employers or their suc-

cessors, to discriminate against employees in violation of Section 8 (a) (3) of the Act.

Dated.....

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, CIO

By,
(Representative) (Title)

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, DISTRICT
No. 1

By,
(Representative) (Title)

SHIP CLERKS ASSOCIATION,
LOCAL 34,

By,
(Representative) (Title)

MARINE CLERKS
ASSOCIATION, LOCAL 1-63,

By,
(Representative) (Title)

SUPERCARGOES AND CHECKERS UNION,
LOCAL 40,

By,
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

This complaint, issued on August 20, 1948, by the Regional Director for the Twentieth Region (San Francisco, California), on behalf of the General Counsel of the National Labor Relations Board, is based upon separate amended and "additional" charges, consolidated for the purpose of hearing, duly filed by the Waterfront Employers Association of the Pacific Coast, herein variously called the WEA, the Association, or the Employers, against the Unions named in the above caption, herein jointly and severally called the ILWU, the Union, or the Respondents, as the context may require, alleging the commission of unfair labor practices within the meaning of Section 8 (b) (1) (A), (2), and (3), and Section 2 (6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 161, herein called the Act.¹ Copies of the complaint, order

¹It was suggested, prior to the final closing of the hearing, that a merger was contemplated of the WEA, the Waterfront Employers Association of California, mentioned later, and the Pacific American Shipowners Association, involved in a companion case against the National Union of Marine Cooks and Stewards, CIO (Case No. 20-CB-20), into a single employer association, to be known as Pacific Maritime Association, which would act as collective bargaining representative in the place

consolidating the cases, and notice of consolidated hearing thereon were duly served on the Respondents and the WEA; a copy of the first amended charge in Case No. 20-CB-19 was served on the ILWU, the principal Respondent, as distinguished from the local unions, on August 24, 1948.

Specifically, the complaint, as amended both during and after the original hearing, alleged, in substance, that:

(1) since December, 1946, the Respondent ILWU, and various dispatchers under its control, have failed and refused, although requested, to dispatch one, True Knowledge, a duly registered longshoreman, from the hiring hall maintained and operated jointly by the ILWU and the WEA at the

and stead of these associations. Since no official notice has been received of the consummation of the proposed merger, the Association will be referred to by its original name. References to the General Counsel, unless otherwise stated, or required by the context, are to his representatives at the hearing; similarly, references to the Board, are to the National Labor Relations Board. Case No. 20-CB-19 deals with the unit of longshore employees; Case No. 20-CB-38, with the units of ship clerks and checkers. The scope of these units and the status of both the employer and employee representatives in these units will be developed later. The "additional" charges mentioned above refer to separate charges filed by the WEA, on behalf of the regional associations hereinafter described, against the several ILWU locals, respectively, involving the units of ship clerks and checkers.

port of San Francisco, because he was not a member of the ILWU;²

(2) since about February 21, 1948, in collective bargaining negotiations with the WEA, the ILWU, as exclusive representatives of longshore employees of member companies of WEA, has demanded and insisted upon stated contract provisions requiring the hiring of all longshoremen through halls, maintained and operated jointly by the ILWU and various employer associations, under the supervision of a union dispatcher;

(3) since about April 13, 1948, in similar negotiations, the ILWU, and its several named locals, exclusive representatives in collective bargaining with respective employer associations, whose members employ ship clerks and checkers in stated regional areas, have demanded and insisted upon provisions similar to those sought with respect to longshoremen;

(4) the Respondents' demand for and insistence upon such provisions were illegal and discriminatory in practical application for stated reasons;

(5) because of the refusal of the WEA, and the various regional associations involved to accede to

²Presumably because the alleged act of discrimination occurred more than 6 months before the issuance of the complaint, the General Counsel sought no redress on behalf of True Knowledge. The allegation was made, and the evidence concerning it was offered and received, solely as an example of the manner in which the hiring hall was conducted in actual practice.

the Respondents' demands, and in order to compel them to yield thereto, the Respondents, in about April and May, 1948, directed, induced, and encouraged the employees of members of said Associations to engage in a strike against said members on and after June 15, 1948, the expiration date of existing collective bargaining agreements;

(6) although the said strike action was enjoined in the District Court of the United States for the Northern District of California, on July 2, 1948, when the preliminary injunction was dissolved, on September 2, 1948, the Respondents engaged in, and ordered members of the Respondent Unions, employed by members of the Associations, to engage in a strike for the purpose of compelling said Associations to execute contracts, which, expressly, or in their performance, discriminated against employees;

(7) on or about December 1, 1948, the WEA, in order to terminate the strike, yielded to the ILWU's demands, with respect to the longshoremen and ship clerks and checkers, whereupon, on about December 6, 1948, the ILWU members returned to work;

(8) on or about December 17, 1948, the WEA and the ILWU executed a collective bargaining agreement embodying the provisions for hiring, dispatching, and registration, and preference of employment for ILWU longshoremen which the Respondents had originally demanded;

(9) on or about December 1, 1948, in order to

terminate the strike, the WEA and/or the regional associations involved, similarly yielded to the demands of the ILWU, and agreed that hiring, dispatching, and registration of ship clerks and checkers should be governed by the practices prevailing prior to June 15, 1948, and further agreed to embody such provisions in any final agreement between the parties;³

(10) since about December 6, 1948, when the strike was terminated and the ship clerks and checkers returned to work, the employment of these persons has been governed by and controlled in accordance with said agreement;

(11) the provisions relating to hiring, dispatching, and registration, and preference of employment to ILWU members, with respect to longshoremen and ship clerks and checkers, are in practical operation and application, as well as under the provisions of the Act, discriminatory and illegal; and

(12) by all the foregoing conduct, the Respondents have:

³As will later appear, the master agreement covering ship clerks and checkers was not actually executed until January 17, 1949; supplementary agreements, designated as port supplements, were executed on March 11, 1949, with respect to the Los Angeles-Long Beach Harbor area, and, on March 25, 1949, with respect to the Oregon and Columbia River area. As of the final close of the hearing on April 21, 1949, no port supplement had been executed for the San Francisco Bay area.

(a) attempted to cause, are attempting to cause, and have caused the WEA and/or its member companies to discriminate against employees in violation of Section 8 (a) (3) of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (b) (2);

(b) refused to bargain collectively with the said WEA and the regional associations, in violation of Section 8 (b) (3); and

(c) restrained and coerced, and are restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (b) (1) (A) of the Act.⁴

Pursuant to notice, a hearing was held in San Francisco, California, on various dates between September 1, 1948, and April 21, 1949, both inclusive,⁵ before Irving Rogosin, the undersigned

⁴In reciting the substance of the allegations, an attempt has been made to state them in substantial chronological sequence rather than in the order in which they appear in the complaint or the amendments. The allegations intended to be embraced in (4) were added by amendment during the hearing on September 3rd; those in (1) and (6), on September 20, 1948. Allegations (7), (8), (9), (10), and (11), were added by amendment, after a motion by the General Counsel, filed February 9, 1949, for leave to reopen the record, amend the complaint, and adduce additional evidence relating to events which occurred after the hearing closed initially on October 28, 1948.

⁵After the hearing was originally closed on October 28, 1948, the record was reopened on motion of

Trial Examiner duly designated by the Acting Chief Trial Examiner, All parties were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues was afforded all parties. At the outset of the hearing, counsel for the Respondents moved, orally and in writing, to dismiss the complaint on the grounds that (1) the complaint failed to establish a violation of any provision of the Act, or that the Respondents had committed any unfair labor practices thereunder; (2) the first amended charge upon which the complaint was based had not been served upon the Respondents prior to the issuance thereof, contrary to the provisions of Section 10 (b) of the Act; (3) the Act, inherently, and as construed and applied, was repugnant to the First, Fifth, and Thirteenth Amendments to the Constitution; and (4) the provisions of the Act involved, as construed and applied, denied the Respondents equal protection of the laws, in that said provisions were being discriminatorily applied to the Respondents, without being similarly enforced against other labor organizations allegedly engaging in the same practices.

With respect to the constitutional grounds assigned, the undersigned, adhering to the principle enunciated by the Board that, as an administrative agency, it would assume the constitutionality of the legislation it was appointed to administer until

the General Counsel, and the hearing reconvened on April 20, 1949.

otherwise determined by the courts,⁶ declined to pass upon those grounds. As to the contention that service of the charge or amended charge "upon which the complaint is based," prior to the issuance of the complaint, is an indispensable jurisdictional requirement, the contention was rejected.⁷

⁶Matter of Rite-Form Corset Company, 75 N.L.R.B. 174; Matter of National Maritime Union of America, et al., 78 N.L.R.B. 971, 979.

⁷Section 10 (b) of the Act, on which the Respondents rely, reads:

"Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. * * *"

Although the General Counsel asserts that, in actual regional office practice, the charge or amended charge on which the complaint is based is usually attached to the complaint, when served with the notice of hearing, the affidavits of service in these cases do not indicate that the practice was followed here. In Case No. 20-CB-19, the affidavit discloses service of a copy of the first amended charge on August 24, 1948, 4 days after the issuance of the original complaint, on International Longshoremen's and Warehousemen's Union, C.I.O. Affidavit of service in the consolidated cases reveals service

It may be noted, in passing, that the contention that the Act is being discriminatorily enforced against the Respondents, in that proceedings have not been instituted against other labor organizations allegedly engaging in similar practices is without merit. Such fact, even if established, would afford the Respondents no immunity from its own unlawful conduct, nor constitute a basis for a claim of denial of equal protection of the laws. The motion to dismiss having been denied, the Respondents moved, orally and in writing, to strike certain allegations of the complaint, in effect, on the ground that they failed to establish that the Respondents had committed unfair labor practices within the meaning of the Act; that certain of the acts com-

on August 20, 1948, the date of the complaint, of "Complaint and Order Consolidating Cases and Notice of Consolidated Hearing," on the Respondents I.L.W.U. and the several locals named in the complaint. The Respondents contend that Section 10 (b), particularly the proviso, requires the filing and service of the charge as a jurisdictional prerequisite to the issuance of complaints in all cases, irrespective of when the unfair labor practices are alleged to have occurred. Although a literal interpretation of the proviso might lead to such a conclusion, it is apparent from an examination of the entire section, as well as the legislative history, that the proviso was intended as in the nature of a statute of limitations designed to prevent the issuance of complaints based upon stale claims, rather than as a jurisdictional requirement. Here, the earliest date on which unfair labor practices are alleged to have occurred is February 21, 1948. The original charge in Case No. 20-CB-19 was filed on June 10, 1948; the amended charge in Case No. 20-CB-38, on

plained of did not constitute unfair labor practices within the meaning of Section 8 (b) (1) (A); and that, with respect to other allegations, they failed to state that the acts complained of affected commerce within the meaning of the Act. The General Counsel having stated for the record that the latter omission was due to inadvertence, he was permitted to amend the complaint accordingly, and the Respondents' motion to strike was denied.

The Respondents thereupon filed their answer, denying generally the substantive allegations of the complaint, as amended; specifically denying the appropriateness of the unit of ship clerks and checkers alleged in the complaint, and affirmatively alleging as appropriate the unit described in the

August 20, 1948. The unfair labor practices are alleged to have continued until the final close of the hearing. The original complaint, setting forth with far greater specificity than is usual in a charge, the nature of the alleged unfair labor practices, was itself served within 6 months of the occurrence of the earliest unfair labor practices. If timely notice of the nature of alleged unfair labor practices is an objective of the proviso, certainly this function has been fulfilled by the actual service of the complaint within the time required. In view of all the circumstances, the undersigned has concluded that the fundamental purpose of Section 10 (b) has been satisfied, and that the Respondents' contention is without merit. The contention that this section also requires the filing and service of amended charges prior to the issuance of the amendments to the complaint is found equally, without merit, especially in view of the nature of the amendments. Cf. *Matter of Cathey Lumber Co.*, 86 N.L.R.B., No. 30; *Matter of J. H. Rutter-Rex Manufacturing Co., Inc.*, 86 N.L.R.B., No. 68.

Board's Decision, Direction of Election, and Order, reported at 71 N. L. R. B. 121. Further answering, the Respondents reiterated the constitutional grounds of defense urged in their motion to dismiss. The allegations concerning Respondents' status as labor organizations within the meaning of the Act; the appropriateness of the unit of longshoremen; the status of the ILWU as majority representative of the employees in said unit, were unanswered, and, in accordance with the Board's Rules and Regulations, are deemed to have been admitted.⁸

When, on September 3, 1948, the General Counsel moved to further amend the complaint,⁹ counsel for the Respondents, though not objecting to the amendment, demanded the "statutory notice" of 10 days before continuing with the hearing, contending that the proposed amendment constituted, in effect, a new cause of action. The request was denied, and the amendment allowed, with the understanding that if, at the conclusion of the General Counsel's case, the Respondents required additional time within which to meet issues newly raised, they might so move. Permission was also granted the Respondents to file such further responsive pleadings as they deemed necessary before the close of the hearing or within such additional time as might be granted. No request or application

⁸Rules and Regulations, Series 5, as amended August 18, 1948, Sec. 203.20.

⁹See footnote 4.

for further time to prepare to meet issues newly raised was thereafter made.¹⁰

Motion by the Respondents for a 10-day adjournment or, alternatively, for 5 days within which to answer the allegations in a further motion to amend the complaint, granted on September 20, 1948,¹¹ was denied, on condition that the General Counsel defer the introduction of evidence bearing on the issues raised by the amendment until the conclusion of the rest of his evidence, at which time Respondents might renew the motion if they desired. The motion was not thereafter renewed. Leave was granted the Respondents to file such additional pleadings in response to the amendment as they might require.

In response to each of the various motions to amend the complaint, granted over the Respondents' objection during the course of the hearing, the

¹⁰At the close of the session on Friday, September 3, 1948, the hearing was adjourned over Labor Day to Tuesday, September 7th. Shortly after the hearing reconvened, counsel for the General Counsel moved for an adjournment until Wednesday, September 15th, to afford him an opportunity to confer with W.E.A. officials, as well as the General Counsel in Washington. All parties consenting, the motion was granted. Counsel for the Respondents thereupon agreed that he would not pursue his demand for 10 days' notice because of the amendment, or later urge, as a ground of denial of due process, that he had not been granted the time requested, but reserved the right to request additional time to prepare to meet the issues newly raised if he deemed it necessary.

¹¹See footnote 4.

Respondents filed supplemental motions to dismiss, on substantially the same grounds as those urged in their original motion to dismiss the complaint. The motions were denied, or reserved for later ruling. In their supplemental answers to the several amendments, the Respondents denied generally the allegations in the amendments; affirmatively alleged that, since on or about September 2, 1948, and continuously thereafter, including on or about September 10, 1948, the WEA had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (5), and 8 (a) (1), by failing and refusing, although requested, to bargain collectively with the Respondents or any of them, thereby restraining and coercing the employees in the exercise of the rights guaranteed in Section 7 of the Act; and prayed that the complaint and the amendment thereto be dismissed. A motion to dismiss on similar grounds, made during the course of the hearing, was similarly denied.

At the close of the General Counsel's case, the Respondents' motions, on which ruling had been reserved, were denied. The Respondents thereupon moved to dismiss the entire proceeding upon the merits, on all of the grounds previously urged, including the WEA's alleged refusal to bargain, and the additional ground that, with respect to the allegations concerning True Knowledge, the alleged discrimination had occurred at a time when preference of employment to union members, provided for in the existing contract, had been permitted under the law then in effect. The motion to dismiss was de-

nied, with leave to renew at the close of the hearing.¹² Counsel for the Respondents thereupon moved for an adjournment of 2 weeks in order to prepare his defense to the complaint, as amended during the course of the hearing, and to meet the evidence adduced, as well as to prepare for the trial of a companion case involving substantially similar issues as those here involved.¹³ With the consent of all parties, the hearing was adjourned to October 13, and later, at the request of the Respondents, to October 25, when the hearing was reconvened.

On October 26, the Respondents moved, without objection, to amend their original answer to allege

¹²On about October 7, 1948, while the hearing was in recess, the Respondents filed with the Board a request for special permission to appeal directly from the undersigned's ruling denying their motion to dismiss at the close of General Counsel's case. Opposition to the request was filed by the General Counsel on October 14th. By telegraphic order on October 18th, the Board denied the request, stating that it preferred to consider the motion upon the record as a whole after completion of the hearing and issuance of the Intermediate Report.

¹³Matter of National Union of Marine Cooks and Stewards, and Pacific American Shipowners Association, Case No. 20-CB-20, which had originally been scheduled for hearing on September 9, 1948, and had been postponed until the completion of the hearing in the instant case. Counsel appearing for the Respondents herein also represent the Respondents in that case. The General Counsel stating for the record that certain amendments to the complaint would be required in that case, preparation of which would necessitate additional time, concurred in the request for the continuance in the instant case.

that the unit of ship clerks, alleged in the complaint to be appropriate, included no persons who are supervisors within the meaning of Section 2 (11) of the Act. At the close of the evidence, the Respondents renewed their motion to dismiss the proceedings, as well as all their motions previously made, on the grounds asserted. Ruling thereon was reserved. The motions are disposed of by the findings and conclusions hereinafter made. Motion of the General Counsel to conform the pleadings to the proof, with respect to formal matters not affecting the substantive issues, was granted without objection. At the close of the evidence, all parties availed themselves of the opportunity to argue orally on the record, and were apprised of their right to file briefs and proposed findings of fact and conclusions of law with the undersigned.

As has already been suggested, on February 9, 1949, the General Counsel moved for leave to reopen the record for the purpose of introducing a further motion to amend the complaint, and adducing additional evidence of events which had occurred since the original close of the hearing on October 28, 1948. Specifically, the allegations related to the negotiation, execution, performance, and operation of certain collective bargaining agreements covering longshoremen and ship clerks and checkers.¹⁴ On February 16, 1949, the undersigned issued an order to show cause, on or before March 1, 1949, why the motion for leave to reopen the record should not

¹⁴For the allegations in the amendment, see footnote 4.

be granted, and the hearing reopened for the purposes stated in the motion. On March 7, the Respondents filed their opposition to the motion for leave to amend the complaint,¹⁵ on the ground that the complaint had already been amended twice, each time shifting the theory of the General Counsel's case; that no new charge had been filed as a basis for the amendment; and that, although the Rules and Regulations permitted the allowance of such amendment, "better practice" required that a new complaint, based upon a charge, be issued. On March 9, the undersigned issued an order (1) allowing the motion for leave to reopen the record for the purposes stated therein, and reopening the record; (2) granting the motion to amend; (3) allowing the Respondents 10 days within which to file an answer to the amendment; and (4) reconvening the hearing on March 23, 1949. The date for the resumption of the hearing was later postponed to April 20, 1949.

In their supplemental motion to dismiss the amendment to the complaint, the Respondents incorporated by reference the grounds urged in their earlier motions and in the opposition to the motion to amend, and moved that the entire complaint, as amended, be dismissed. The motion was denied with leave to renew before the close of the hearing.

The Respondents' answer to the amendment in-

¹⁵Upon the reopening of the hearing, at the request of counsel for the Respondents, the opposition to the amendment of the complaint was treated as opposition to the reopening of the hearing as well.

incorporated by reference all the answers previously filed, denied generally the allegations contained, and affirmatively averred that the Respondents had been denied due process and equal protection of the laws. As grounds for this latter defense, the Respondents alleged that, notwithstanding that another employer association had, on or about December 1, 1948, with the knowledge of the Board and the General Counsel, entered into collective bargaining agreements with two other labor organizations, containing substantially the same hiring hall, preference of employment, and related provisions as those now charged, no similar unfair labor practice proceeding had been instituted against the "aforesaid contracts."

On March 29, 1949, the WEA, by its attorneys, filed a document entitled Request for Dismissal, asking that the consolidated proceeding be dismissed "without prejudice." When the hearing reconvened on April 20, 1949, counsel for the Respondents moved that the proceedings be dismissed, on the basis of the WEA's request,¹⁶ on the ground, in substance, that, since the close of the original hearing, the parties had negotiated collective bargaining agreements under which they had been operating successfully, and that to pursue these proceedings would unsettle the harmonious

¹⁶In clarification, W.E.A. counsel stated at the hearing that no special significance was to be attached to the phrase, "without prejudice," and that it was the sense of the request that the proceedings be dismissed unconditionally.

industrial relations which had been attained, to the detriment of the industry and the public. For his part, in seconding this motion, counsel for the WEA argued that, inasmuch as Congressional action, designed to remove hiring halls from the proscription of the Act, was reasonably to be anticipated, the issues would become moot, and no useful purpose would be served by continuing the proceedings. Opposing the request, counsel for the General Counsel pointed out that the collective bargaining agreements, which preserved the existing hiring hall practices, had been the result of economic duress by the ILWU, and that to dismiss these proceedings would be to condone otherwise unlawful conduct. With respect to possible Congressional action, counsel for the General Counsel observed that prospect of such action was too speculative to be a relevant consideration. After carefully weighing all the considerations, the arguments of counsel, and the public policy which the Act was designed to effectuate, the request to dismiss the proceedings, for leave to withdraw the charges and the motion to dismiss the complaint, as amended, were denied, with leave to renew before the close of the hearing. When renewed, ruling on the motions was reserved. The motions are disposed of by the findings and conclusions herein. Before the final closing of the hearing, all parties were reminded of their right to file briefs, and proposed findings of fact and conclusions of law. After a number of extensions of time for filing briefs, the General Counsel and the Respondents filed their briefs on

May 24, 1949, and June 13, 1949, respectively. None of the parties has filed proposed findings of fact or conclusions of law.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The Business of the Companies

Waterfront Employers Association of the Pacific Coast, herein called the WEA, the Association, or the Employers, as the context may require, is an employer association, organized since June 22, 1937, under the laws of the State of California as a non-profit corporation, designated by the shipping, shipping company agents, stevedore, and terminal companies whose names appear in Appendix A, as their agent for the purposes of bargaining collectively with labor organizations concerning rates of pay, wages, hours of employment, and other conditions of employment of employees of said companies engaged in performing longshore work, as hereinafter defined, on the Pacific Coast.

Waterfront Employers Association of California, herein called the WEAC, is an employer association, organized since November 1, 1943, under the laws of the State of California as a non-profit corporation, acting in concert with, and administering the policies of, the WEA, in the State of California, designated by the companies whose names appear in Appendix A, as their agent for the purposes of

bargaining collectively with labor organizations concerning rates of pay, wages, hours of employment, and other conditions of employment of employees of said companies engaged in performing clerical work in connection with the loading and discharging of ships cargo, as hereinafter defined, in the San Francisco Bay, and Los Angeles-Long Beach Harbor areas.

Waterfront Employers of Oregon and the Columbia River, herein called the WEOC (formerly known as Waterfront Employers of Portland, herein called the WEP),¹⁷ is an employer association, organized since December 12, 1934, under the laws of the State of Oregon as a non-profit corporation, acting in concert with, and administering the policies of, the WEA, in the State of Oregon, designated by the companies whose names appear in Appendix A, as their agent for the purposes of bargaining collectively with labor organizations concerning rates of pay, wages, hours of employment, and other conditions of employment of employees of said companies engaged in performing clerical work in connection with the loading and discharging of ship's cargo, as hereinafter defined, in the Oregon-Columbia River District.¹⁸

¹⁷The change in name of this Association occurred on April 1, 1948.

¹⁸Although not referred to in the complaint, and mentioned only indirectly at the hearing, Waterfront Employers of Washington, herein called the W.E.W., another regional employer association, in the State of Washington, is represented by the

The foregoing associations are collectively referred to herein as the Associations or the Employers. Reference to the regional or area Associations is to the WEAC or WECC as the context may require. A majority of the member-companies of the regional Associations are also members of the WEA. The officers of the WEA and those of the WEAC are identical.

Each of the companies listed in Appendix A is engaged in the loading, unloading, or handling of waterborne cargo at various ports on the Pacific Coast, and, in the course and conduct of its operations, loads, unloads, or handles a substantial amount of cargo in the course of transportation between various States of the United States, between the United States and non-contiguous territories or possessions, and between the United States and foreign countries.

During the year 1947, approximately 21 million tons of cargo was shipped from and into, and handled at, the various ports on the Pacific Coast by employer-members of said Association, to and from foreign ports over various world routes, generally referred to as the off-shore trade, and to and from various ports on the east coast, the territories of

W.E.A., as party to the contract, covering longshoremen in the State of Washington, in ports other than Tacoma, Port Angeles, and Anacortes. In those three ports, both the longshoremen and checkers are represented by the International Longshoremen's Association, commonly referred to as the I.L.A., affiliated with the American Federation of Labor, with which the W.E.W. has separate collective bargaining agreements.

Alaska and Hawaii, South America, China, and Australia, generally referred to as the coastwise trade. During the first 6 months of 1948, in excess of 10 million tons of cargo was thus shipped and handled by said employer-members. Approximately 12,000 longshoremen and carloaders, and 3,000 ship clerks or checkers were employed by said employers during this period on the Pacific Coast.¹⁹

Upon the basis of the foregoing, the entire record, including earlier findings of the Board relating to the business of these associations and their employer-members,²⁰ it is abundantly clear, and the undersigned finds, that the companies involved, employer-members of the several Associations as shown in Appendix A, are engaged in commerce within the meaning of the Act.

II. The labor organizations involved

International Longshoremen's and Warehousemen's Union, affiliated with the Congress of In-

¹⁹These findings are based upon the credible and undisputed testimony of James A. Robertson, secretary, since February, 1947, and acting secretary, since January, 1946, of the W.E.A.; Kenneth Saysette, treasurer, since 1946 of the W.E.A.; and Russell E. Ferguson, manager and secretary-treasurer, since 1946, and assistant manager from 1939 to 1946, of the W.E.O.C.; and the articles, amended articles of incorporation, and bylaws of the respective Associations, as well as other exhibits received in evidence.

²⁰See Matter of Waterfront Employers Association of the Pacific Coast, et al., 71 N.L.R.B. 80, 71 N.L.R.B. 121, of which the undersigned has taken official notice.

dustrial Organizations; International Longshoremen's and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local No. 1-63; and Supercargoes and Checkers Union, Local 40 each affiliated with International Longshoremen's and Warehousemen's Union, are labor organizations admitting to membership employees of the companies, employer-members of the Associations.

III. The unfair labor practices

A. Introduction

On October 12, 1934, an arbitration award by the National Longshoremen's Board, appointed by President Roosevelt to mediate the protracted strike which had begun on May 9, 1934, ushered in a new era of labor relations in the longshore industry on the west coast. Aimed at stabilization of employment, equalization of earnings, and the elimination of evils in existing hiring practices, the award introduced the device of the joint hiring hall, under the supervision and control of Labor Relations Committees, on which the Employers and the Union were equally represented.

Longshoremen, the primary group involved in the strike, were then represented by Pacific Coast district locals of the International Longshoremen's Association, herein called the ILA, affiliated with the American Federation of Labor. In 1937, as a result of a change in affiliation of various locals on the west coast, the ILWU succeeded the ILA as bar-

gaining representative, and, in 1938, was certified by the Board as exclusive representative of the longshore employees.²¹

The award became the prototype for subsequent collective bargaining agreements between the parties. As amended from time to time, and interpreted by labor arbitrators' awards, it was incorporated by reference in later contracts including the one discussed hereinafter, which was terminated on June 15, 1948. In addition, the basic provisions of the award relating to hiring and dispatching through the joint hiring hall, the establishment of Labor Relations Committees, selection of hiring hall personnel, and definition of the duties and authority of the Committees, were embodied substantially as they appeared in the award.²²

²¹The history of organization and collective bargaining in the longshore industry on the west coast, both before and since the 1934 award; the circumstances surrounding the change in union affiliation of the employees involved; the nature and status of the Associations and their predecessors as employer representatives; and other historical data have been discussed in detail in several Board decisions, and is not reviewed here. See *Matter of Shipowners Association of the Pacific Coast, et al.*, 7 N. L. R. B. 1002; 32 N. L. R. B. 668; 33 N. L. R. B. 845; *Matter of Waterfront Employers Association of the Pacific Coast, et al.* 71 N. L. R. B. 80; 71 N. L. R. B. 121.

²²Except for preference of employment to union members, which did not appear until 1937, and some modifications, the pertinent sections of the provisions in the award are basically those quoted hereinafter, contained in the contract which expired on June 15, 1948.

Under the terms of the award, all longshoremen who had derived their livelihood from the industry for at least 12 months during the 3 years next proceeding May 9, 1934, were eligible for registration by the Port Labor Relations Committees, which were directed to compile registration lists of such longshoremen in each port within 30 days of the date of the award. After the completion of these lists, no longshoreman whose name did not appear thereon could be dispatched from the hiring halls, or employed, by any employer, while any registered longshoreman qualified, ready, and able to perform the work, was available. All, however, were to be dispatched "without favoritism or discrimination, regardless of union or non-union membership," and in such manner as to equalize earnings as nearly as practicable.²³

B. Registration of longshoremen, pursuant to the award, and since

With the entry of the award, Labor Relations Committees were established in the various ports, and preparations made for the registration of longshoremen who qualified under the prescribed formula. In those ports in which hiring halls had been previously maintained, existing registration lists were made available to the respective Port Labor Relations Committees to assist them in their task.²⁴

²³No attempt has been made to summarize comprehensively all the provisions of the award. Only those having relevance to the basic issues have been mentioned.

²⁴In the port of Tacoma, the hiring hall had been maintained and operated exclusively by the ILA; in

At the San Francisco port, where no hiring hall had been in existence, the Committee furnished applications to longshoremen claiming to be eligible for registration. The completed applications were processed by the Committee, which determined whether the applicants qualified for registration. Some applicants who were unable to qualify under the terms of the award were, nevertheless, permitted to register by mutual consent of the employer and union representatives of the Committee. In some instances where the union representatives objected to the registration of men actually qualified, the employer-members were able to prevail and to effect the registration of those applicants. Other applicants who could not qualify were permitted to register with the mutual consent of the employer and union members of the Committee. In general, however, those who were unable to qualify were issued "permits," cards bearing a registration number prefixed by the initial "P." Longshoremen who were fully qualified were assigned serial numbers, and issued brass checks, later replaced by identification cards, and "plugs."²⁵

Seattle, by the ILA and the employers, jointly; in Portland, jointly, but generally under the control of the employers; and in San Pedro, exclusively under employer control. Prior to the 1934 strike, registered longshoremen at these ports were generally dispatched before any others.

²⁵Fibre cylinders about $11\frac{1}{4}$ inches long and $\frac{3}{8}$ inches in diameter on which the serial number was imprinted. The designation "plugboard man," commonly used in the industry, derives from this source.

By February, 1935, of approximately 4,300 applicants, some 3,500 had been fully registered at the port of San Francisco, and a month later, the joint hiring hall was in operation. With the completion of registration in May, 1935, a roster of registered longshoremen in that port was prepared and copies were distributed to the employers, the ILA, and the hiring hall dispatchers.

Between 1935 and 1948, the Labor Relations Committee made some additions to the registration list, generally on a permit basis. The system of issuing permits remained in effect until July, 1947, when, upon their admission to membership in the ILWU, permit men were granted full registration by the Port Labor Relations Committee. Except for the period during World War II, no permits have since been issued. The comparatively few additions made, apart from the war years, have been on the basis of full registration as ILWU members. During the war, however, when the volume of shipping increased, and the number of longshoremen was insufficient to handle cargo flowing through the ports, a large number of permits was issued, exceeding at times the number of registered longshoremen.

In August, 1945, there were approximately 10,000 longshoremen either fully registered or permit men, in the port at San Francisco. During September and October, 1945, the Port Labor Relations Committee reduced this number by dropping from the list the last 1,000 permit men who had been enrolled. Since then, the number on the registration

list has been further reduced, so that as of the time of the original hearing there remained at the port of San Francisco a total of only 6,500 longshoremen, all fully registered.

During 1948, the only additions to the registration list were of longshoremen, formerly registered, who had left the industry, and since returned, and sons of longshoremen who wished to follow their fathers' calling. The number so registered has been comparatively small, and has been vastly exceeded by the number dropped from the roster. Such additions as have been made, since the original registration list was established, have usually been by mutual consent of the employer and union members of the Labor Relations Committee. Provisions have existed, however, in collective bargaining contracts executed since the original award, for recourse to arbitration by either party in the event of failure to agree upon additions to the registration list. On one occasion in 1936, when the industry experienced a shortage of longshoremen, the employer-members of the Committee sought to have the list opened for the addition of 350 longshoremen. Upon objection by the union members, the employer representatives resorted to arbitration. The dispute was settled without the necessity of a formal award, however, by agreement of the representatives to reopen the list for the addition of 500 longshoremen.²⁶

²⁶The same year a dispute arose in the port of Portland regarding registration of eligible long-

Although similar disputes have arisen on the issue of additions to the registration list, except for the occasions just mentioned, the employer members have not resorted to arbitration for this purpose. On the other hand, in 1943, when the union members of the Committee sought to have the names of four individuals added to the registration list, to which the employer members objected, the union members resorted to arbitration with the result that the names of those persons were added to the list.

From the time of the original registration in 1935, until 1937, union membership was not required as a prerequisite to registration, and, so far as the record discloses, there was no discrimination in the dispatching of registered longshoremen by reason of membership or non-membership in the Union. Since 1937, however, the parties have provided in the collective bargaining agreements for preference of employment to union members. Union members, therefore, have been dispatched in preference to non-union men, irrespective of when they had "plugged in." It was conceded at the hearing that, of the 6,500 registered longshoremen in the port of San Francisco, only 1 was not a member of the ILWU.²⁷

shoremen, to whom the Union had objected because they had failed to participate in the 1934 strike. It is not clear whether the employers resorted to arbitration, but the controversy was finally resolved by permitting all longshoremen who wished to return to work to register. Others voluntarily decided to leave the industry.

²⁷True Knowledge, whose case is discussed below.

Persons not previously employed in the longshore industry, who applied to an employer for work, have generally been referred by the employer to the Union. If the Union approved of the applicant and was willing to have his name added to the registration list, it initiated appropriate action with the Labor Relations Committee. If, however, it disapproved, and the employer members were unwilling to pursue the matter to arbitration, there was no way in which the applicant himself could obtain registration. He might, however, obtain employment as a casual by presenting himself at the hiring hall and awaiting opportunity to be dispatched after all registered longshoremen had been dispatched or had refused to accept such job assignments as were available.²⁸

Although the situation may have differed in immaterial respects the procedure outlined was also instituted in the various ports, and, in general, represents the system prevailing at the time of the hearing.

C. Registration of ship clerks and checkers

Ship clerks or checkers who perform the clerical work incidental to longshore operations are generally classified as monthly clerks and hourly or daily clerks. Monthly clerks are employed directly

²⁸Thus, the unloading of "banana boats," and the handling of cement bones, and other obnoxious cargo has usually been performed by non-registered men or casuals. About 50 per cent of the casuals have been engaged in the unloading of banana boats.

by the individual employer, without reference to registration lists, and are guaranteed a minimum number of hours of work each month. Prior to 1943, each group was bargained for in separate collective bargaining contracts in the various ports. Since then, they have been included in a single contract in each port.

The first contract covering ship clerks in the port of San Francisco was executed in April 1937. Under the terms of that contract, a Labor Relations Committee similar to the one dealing with long-shoremen was established, and, in May or June, 1937, the Committee instituted a registration list of ship clerks in San Francisco, covering daily clerks only.²⁹ The hiring hall was established, and

²⁹Daily clerks are further subdivided into preferred and casual clerks. The former report directly to the individual employer; the latter are dispatched from the hall, permitted to work for the duration of the particular job to which they have been dispatched, and then return to the hall to await further dispatch. Approximately 50 per cent of the ship clerks are dispatched through the hiring hall in San Francisco. The system varies in relatively minor respects from the port to port. For example in the port at Portland (Oregon-Columbia River area) the registration list includes both monthly and hourly clerks. In this area, too, the clerical employees are known as checkers, and the Labor Relations Committee is known as the Joint Checker Committee. In areas where registration lists, compiled either by employers or the Union, already existed these lists were made the basis of the new registration lists by mutual consent of the employer and union members of the Labor Relations Committees in the ports involved.

the rotary system of dispatching inaugurated. Unlike the longshoremen, registered clerks were issued no plugs, but merely signed their names to a register in the custody of a dispatcher, selected by the Union, but under the control of the Labor Relations Committee.

A further classification of ship clerks, designated permit clerks, was established, for whom a separate registration list was compiled. In contrast to registered ship clerks, permit clerks were issued plugs and dispatched through plugboards. They were dispatched, however, only when fully registered men were not available. If no registered or permit men were available, the dispatcher usually communicated with men desirous of obtaining regular employment as clerks, generally recommended by the Union, or others who might be waiting in the hiring hall for an opportunity to work. When dispatched, they would be furnished a slip permitting them to work only 1 day or until the completion of the job. During August, 1948, this occurred frequently due to the unusual volume of cargo handled.

Persons desiring employment who have never worked as ship clerks ordinarily obtain the recommendation of a union member and then apply to the dispatcher. As in the case of longshoremen, additions to the registration list are proposed by members of the Labor Relations Committee. If both the employer and union members of the Committee consent, the person's name is added to the list, usually as permit man, until admitted to membership in the Union, at which time he may become

fully registered. Although persons recommended for employment as clerks by the union members of the Committee have generally been accepted for registration, there have been instances when those recommended by employer members have not been approved. The record does not disclose whether in those instances the employer members have pursued the matter to arbitration.

Although the facts concerning ship clerks, outlined above, are primarily those relating to the port at San Francisco, they apply substantially to the other ports as well, and reflect the situation existing at the time of the hearing at all ports involved.

D. The joint hiring hall and its operation

The hiring hall described here is, essentially, the one maintained and operated for the dispatching of longshoremen in the port of San Francisco. Inasmuch as the one maintained for ship clerks at this port, as well as those for both longshoremen and ship clerks or checkers, in other ports involved, are of substantially the same type, they will not be discussed separately. For the purposes of this report, what will be said concerning the longshore hiring hall in San Francisco, and the practices and procedures which have evolved, is intended to apply equally to the remaining hiring halls. The conditions described are, in substance those prevailing at the time of the hearing.

Since the 1934 award, central hiring halls have been maintained in the ports of Seattle, Portland,

San Francisco, and Los Angeles, under the joint Labor Relations Committees originally created under the award. Expense of maintaining the hiring hall has been shared equally by the regional employer association and the Union in each port.³⁰ Registered longshoremen not members of the Union have been required, by the award and succeeding contracts, to contribute to the Port Labor Relations Committee their pro rata share of the expense, equivalent, in effect, to dues paid by union members.³¹ In San Francisco, the Labor Relations Committee established a joint bank account, to which the Employers and the Union made equal contributions. At the time of the hearing, the balance in this account was \$10,000. Once each month, the Labor Relations Committee submits bills to the respective parties for one-half the actual expenses incurred by the Committee during the preceding month.

Except for the dispatchers, elected for a stated term by the Union, personnel at the hiring hall are

³⁰All references to the Union, prior to 1937, are, of course, to the ILA.

³¹This provision has never been enforced in San Francisco, nor, so far as the record discloses, in other ports. In actual practice, fees due from permit men, to whom this provision would presumably apply, have been paid to the Union. Although requested by the employer members of the Labor Relations Committee, to turn over, or account for, these fees, the Union has failed to do so. The employer members, however, have not undertaken to pursue the matter.

selected by, and are under the supervision and control of the Port Labor Relations Committee. At San Francisco, there are six dispatchers, including a chief and assistant chief dispatcher, all of whose salaries are paid by the Committee. The hiring hall is under the immediate supervision and control of the chief dispatcher.

1. Dispatching procedures

Registered longshoremen are comprised of regular gangs and plugboard men. Regular gangs, authorized and established by the Port Labor Relations Committee, consists of 11 men, viz., 1 gang boss, 2 winch drivers, 6 hold men, and 2 dock men, who work as a unit under the gang boss. Plugboard men are longshoremen not assigned to regular gangs, but who work as individuals, dispatched through the hiring hall. During July, 1948, there were approximately 258 regular gangs, comprising about 50 per cent of the registered longshoremen, in the port of San Francisco.

a. "Plugboard" men

Plugboard men report to the hiring hall at the regular dispatching hours, between 6:30 and 8:30 a.m., for day work, and between 4 and 6 p.m., for night work.³² Separate boards containing consecutively numbered holes are maintained at the hall, covering day and night work, and the various job

³²Although jobs are dispatched at times other than the regular dispatching hours, registered longshoremen are not required to accept such jobs.

classifications of longshore work, as e.g., dock men, tractor ("jitney") drivers, lift truck drivers, etc. By inserting the plug at the first available place on the board which corresponds to his preference for day or night work in a desired classification, the plugboard man selects the job for which he wishes to be dispatched.³³

The employers notify the dispatcher, in advance of the dispatching hours, of the number of men they will require in each category. When the time for dispatching arrives, the dispatcher removes the plugs from the various boards in order of numerical sequence, and notifies the longshoremen whose plug has been removed, over a public address system, that he is about to be dispatched. The first man to be so dispatched in each job classification is the one who has "plugged in" first on the appropriate board. The next man dispatched in the same classification is the one who has "plugged in" next in order, etc. Thus, rotation of dispatching is accomplished. The man to be dispatched reports to the dispatching window, obtains a slip containing his orders, and then presents himself at the job to which he has been assigned. A plugboard man failing to respond, after being called over the public address system three times, forfeits the opportunity

³³Special qualifications, established by the Port Labor Relations Committee, as well as prior approval of the Committee, are required for the jobs of gang boss, winch driver, and lift truck driver, and only those who have been qualified may plug in for those jobs.

to work the remainder of that day, unless excused by the dispatcher.

If, after all available plugboard men have been dispatched, jobs are still unfilled, these jobs are, in practice, filled by the dispatcher from among members of locals affiliated with the Union, which have been notified of the job opportunity. On the rare occasion when the dispatcher is unable to fill all remaining jobs from these sources, he notifies the employers, who are then at liberty to hire from any source. Non-registered longshoremen, hired in this manner, are permitted to work the day they are dispatched, but may not work the next day if a registered man is available who claims the job.

b. Regular gangs

The dispatching procedure with respect to regular gangs is somewhat different. Because employers generally prefer regular gangs, of which there are frequent shortages, a method has been devised to distribute gangs among employers who desire them as equitably as possible. The employers notify the office of the WEA manager by 10:30 a.m. daily of the number of gangs they want. When all the orders have been received for the day, the manager, or members of his staff check the orders against the number of available gangs, and allocate them among the employers, having regard for the arrival time and importance of vessels, and the nature of the cargo. The information is then telephoned to the chief dispatcher. When the gang boss, under instructions from the chief dispatcher, telephones

for his orders, the dispatcher furnishes him with the name of the vessel to which the gang is to report, the pier at which it is berthed, and the number of men required. Substitutes for gang members, when necessary because of illness or other absence, are procured from the hiring hall by means of the plugboard. The rotary system is also employed with respect to regular gangs which are dispatched as units.

In the case of both longshoremen and ship clerks, the rotary system of dispatching has, however, been subject to an arrangement designed to equalize earnings. Formerly, the various Labor Relations Committees established the maximum number of hours these employees might work in any given week. Late in 1947, or early in 1948, as a matter of convenience, the Committees permitted the dispatchers to make this determination. The number of hours in each workweek, which fluctuates from time to time, is posted at the hiring hall, and, before an employee is dispatched, the dispatcher ascertains whether he has already fulfilled the quota for the week.

Although the Employers have charged that dispatchers, under instructions from the Union, have arbitrarily exceeded their authority, by laying off and adding gangs, or changing or limiting the "make-up" of gangs, no specific instances were offered at the hearing in support of this claim. According to the undisputed testimony of WEAC Manager Gregory, however, this dispute was pend-

ing before the Coast Labor Relations Committee, presumably because of the failure of the Port Labor Relations Committee to settle this controversy.

E. Instances of alleged discriminatory treatment attributed to the Union

It should be borne in mind that the evidence, presently discussed, was offered by the General Counsel, and received, solely for the purpose of illustrating the manner in which the hiring and dispatching procedures were administered in specific instances. No remedy is sought on behalf of the persons alleged to have been discriminated against, nor is any remedy available to them within the framework of the complaint, as amended. Primarily, the evidence relates to a longshoreman, known as True Knowledge. During the course of the undisputed testimony of WEAC Manager Gregory, however, evidence was elicited, not specifically alleged in the complaint, as amended,³⁴ dealing with a ship clerk, named George Phelan, and another, Cole, Jackman, a former longshoreman.

1. George Phelan—ship clerk

This evidence disclosed that late in 1947, Phelan complained to WEAC Manager Gregory that Dispatcher James Roache had refused to dispatch him from the hiring hall at San Francisco, despite the

³⁴Aside from the general allegation that the registration, hiring, and dispatching practices and procedures are, in practical operation, discriminatory.

fact that he was a registered ship clerk, and a member of the Union. Gregory raised the matter before the Labor Relations Committee. After the case had been considered at several sessions, the union members of the Committee agreed that Phelan should be dispatched. The case was regarded settled, and he returned to work in January, continuing until about the middle of May, 1948.

Later, Phelan reported to Manager Gregory that the dispatcher had again refused to dispatch him, twice during May, and early in June. Meanwhile, on about June 1, the Union had notified Gregory that Phelan had been expelled on about May 15, 1948, and requested that his name be removed from the registration list. At the time of this request, according to Gregory, no reason was given. When the case was later reopened before the Labor Relations Committee by Gregory, the reason advanced by the Union was that Phelan had not made himself available for work. Gregory testified that, when questioned, the dispatcher denied that Phelan had been in the hiring hall on the days in question. Phelan, according to Gregory, was equally insistent that he had. In his testimony, Gregory admitted that he had not examined the registration records to determine whether Phelan had actually signed in on the days in question, as required in order to be eligible to be dispatched.

Gregory also testified that he advised Phelan that he would present his complaint to the Labor Relations Committee if he desired to pursue the matter, but that Phelan declined the offer. A charge

arising out of this controversy was filed with the Board, but later abandoned. Phelan's name has not since been removed from the registration list, but he has not been dispatched since May 15, 1948. There was no showing, however, that he has made himself available at the hiring hall since that date. Gregory conceded at the hearing that this was the only instance of a formal complaint to the Labor Relations Committee regarding the failure or refusal to dispatch clerks eligible for such work.

Without regard to the question of the effect of Phelan's expulsion from the Union upon his right to enjoy preference of employment, under the existing contract, the absence of any probative evidence that the dispatcher actually failed to dispatch him, or that Phelan even made himself available to be dispatched on the days he claimed to have been denied employment, precludes any finding that the hiring and dispatching procedures were applied discriminatorily against him. No such finding is made.

2. Cole Jackman—ship clerk

Further uncontradicted evidence was elicited, during the examination of WEAC Manager Gregory, of alleged favoritism in the dispatching of Cole Jackman, a member of the Union, and of the Negotiating Committee for Ship Clerks. According to Gregory, Jackman, a longshoreman at San Francisco on a visitor's permit from Portland in January and February, 1948, but never registered as a ship clerk, was dispatched regularly in that capacity from March to September 1, 1948. During March

and April, 1948, Gregory testified, Jackman's earnings were relatively higher than the average for ship clerks at that port. The evidence does not disclose whether this matter was the subject of any protest by the employer members of the Labor Relations Committee.

In the absence of any satisfactory explanation, the undersigned concludes and finds that this departure from the provisions and practices regarding the registration and dispatching of clerks, during the period involved, affords evidence of an instance of discrimination on account of union membership. Such preference of employment, even if permissible under the existing contract, was in obvious disregard of the provisions requiring registration as a condition precedent to eligibility for regular employment. Relatively few non-registered clerks were dispatched through the hiring hall during this period, except during July and August, when the number increased considerably. Such clerks, however, were entitled to be dispatched only after all available registered clerks had been offered, and accepted or rejected, opportunity for employment.

3. The Cause of True Knowledge

In August, 1933, Charles W. Ross, Jr., who had been employed as a longshoreman for some 12 years, principally in the San Francisco Bay area, joined the ILA as a charter member. He remained a member of that union until it was succeeded as bargaining agent by the ILWU, when he joined that labor organization, continuing his membership

until January, 1948. He was among those registered in the initial registration at the port of San Francisco in 1935, and was assigned registration #1766. During his employment on the waterfront, he performed every type of longshore work, as a plug-board man, except that of winch driver and jitney driver.

In the spring of 1935, apparently Ross became a follower of Father Divine and adopted the name of True Knowledge.³⁵ He continued in his calling as a longshoreman under the same registration number until the early summer of 1948. During World War II, because of his religious scruples, he refused to handle war cargo, and worked exclusively at the Matson Dock, piers 30 and 32, where only commercial cargo was handled. So far as the record discloses, no objection was made by the employers or the ILWU to this arrangement.

On September 30, 1946, the ILWU and other

³⁵Although the person testifying at the hearing identified himself as True Knowledge, and affirmed that he "bear[s] no record" of anyone named Charles W. Ross, Jr., he acknowledged that he had always been registered as a longshoreman under registration #1766. It was stipulated between all parties that registration #1766 had been assigned in the original registration to Charles W. Ross, Jr. While it appears from the witness' testimony as a whole that his religious convictions prevented him from "bearing any record" of existence prior to 1935, when he became converted and reborn as True Knowledge, it can be reasonably inferred, on the temporal level, that True Knowledge and Charles W. Ross, Jr., are one and the same. The undersigned so finds.

maritime unions on the west coast engaged in a strike which lasted until early December of that year. When it had appeared that the strike was imminent, True Knowledge applied to the ILWU Clearance Committee for exemption from picket duty because of a conflict with his religious convictions. No action was taken on his request, and when the strike ended about December 5, True Knowledge returned to work.

He had been working 7 or 8 days, when his walking boss, a union member, under whose supervision he had been working 3 or 4 years, told him that he would have to obtain a clearance card from the ILWU Clearance Committee. When he applied to that Committee, he was questioned as to the reason he had failed to engage in picket duty during the strike. Rejecting his answer as unsatisfactory, the Committee refused him clearance, but advised him of his right to appeal to the ILWU Executive Board. His appeal to that Board, and later, to the general membership of ILWU Local 10, were both denied after hearing.

In January or February, 1947, the Union notified the Labor Relations Committee that True Knowledge had been expelled from membership, and requested that his name be removed from the list of registered longshoremen. The employer members of the Committee refused. From about mid-December, 1946, until early February, 1947, when the matter was brought up by Gregory before the Labor Relations Committee, True Knowledge was denied opportunity to work on the waterfront. After several

conferences, a settlement was finally effected by the Committee, on April 29, 1947, which permitted him to be dispatched as a fully registered long-shoreman, without union preference, but before permit men could be dispatched.³⁶

He returned to work next day and worked fairly steadily thereafter until about August, 1947, when all existing permit men were either admitted to membership in the Union, and granted full registration, or removed from the list. True Knowledge,

³⁶Excerpts from the minutes of the Labor Relations Committee of April 29, 1947, disclose the actual terms of settlement:

True Knowledge Case

The case of True Knowledge (minutes of 1/7-14/47) was discussed by the Committee. Union stated that they had come to the following conclusions:

1. On the basis of the [Wayne] Morse Award, [not relating specifically to this case] True Knowledge will be permitted to work in the port and will be dispatched for work as a man registered in the industry, but only after all full Union members have been dispatched, and before permit men are dispatched.

2. True Knowledge can plug in to any desired section of the board and when dispatched shall work for the duration of the job to which he is dispatched.

3. True Knowledge is to live up to all rules and regulations of the Hiring Hall. Employers agreed to this agreement. True Knowledge was present before the Committee and also agreed to this arrangement for work on the San Francisco Waterfront and stated that he would contact the Chief Dispatcher in order to make proper arrangements as to where he would plug in for work. Case closed.

however, was neither removed from the registration list nor restored to membership. He continued to report to the hiring hall thereafter. Under the settlement, True Knowledge was permitted to plug in on any board, applicable to a job classification for which he was qualified. His plug would not be removed, however, until the plugs of all union members on the same board had been "pulled," without regard to when they had "plugged in." Thus, True Knowledge would be the last person to be dispatched from the board in that particular category. Some times, True Knowledge testified, he would remain at the hiring hall all day waiting to accept a job others had refused. As has been mentioned, the quota of hours to be worked each week was posted at the hall. During the period from April 30, 1947, to January 1, 1948, he worked the posted weekly quota infrequently.³⁷

Beginning in January 1948, the dispatchers refused to dispatch him at all until all the longshoremen who had "plugged in" on all plugboards had first been dispatched. Thus, even when True Knowl-

³⁷Since the record does not disclose what proportion of longshoremen, if any, actually worked the full quota, no finding of disparate treatment is based on this factor. On cross-examination of True Knowledge, however, testimony was elicited that, at the hearing before the Labor Relations Committee, an employer had stated that True Knowledge had worked only half the number of hours worked by other registered longshoremen during this period. The undersigned regards this evidence of insufficient probative value to support a finding.

edge's plug was reached on a particular board, the dispatcher would refuse to dispatch him until all plugs on all other boards had been "pulled." He complained to the various dispatchers several times over a period of 4 or 5 months, and finally protested to Chief Dispatcher James Sutter that this was contrary to the agreement reached by the Labor Relations Committee. He was told that he had no right to work as long as union men were available. On several occasions, when he complained to a dispatcher, whom True Knowledge could identify only by general physical description, and the first name, Walter, he was told that he would not be given an opportunity to work as long as the dispatcher could obtain anyone else. Similar complaints to Acting Chief Dispatcher Charles Mayfield were equally unavailing.

True Knowledge continued to "plug in" until about mid-June, 1948, three times the last week, during which he was dispatched to one job lasting 2 days. He plugged in once or twice after that, without avail, and, on June 24, 1948, finally withdrew from the waterfront, abandoning further effort to obtain work in the industry.

Although his dues in the ILWU had been paid only to January, 1947, there was no contention that the action taken by the Union or the dispatchers was in any way based on failure to maintain his dues paying membership. On the contrary, the record as a whole establishes that the treatment accorded him stemmed solely from his failure to

engage in picket duty during the strike in the fall of 1946.³⁸

The General Counsel contends that the instances recited support the allegations of the complaint, as amended, and the general contention that the hiring hall provisions, including those dealing with registration and dispatching, and the practices and procedures thereunder, have, in practical operation, resulted in discrimination on account of membership or non-membership in the Union. This contention is discussed hereinafter.

³⁸At the close of True Knowledge's testimony, the Respondents moved to strike the same on two grounds. First, that the witness had, because of his religious beliefs, testified under an affirmation rather than an oath, and that the Board's Rules and Regulations provide that, "Witnesses shall be examined orally under oath . . . "Sec. 203.30. See, however, Sec. 203.35 (a), which grants trial examiners authority to administer oaths and affirmations. Cf. Also, Matter of Union Starch & Refining Co., 82 N. L. R. B., No. 60. As a further ground for the motion to strike, the Respondents contended that the witness' testimony was palpably unreliable. Reference was presumably to the witness' frequent digressions into the realm of metaphysics during which he expatiated upon his religious convictions. Abstruse and recondite as these portions of his testimony may have seemed to some, those dealing with more mundane affairs, including the history of his employment on the waterfront, his union affiliations, his refusal to picket during the 1946 strike, the later consequences to his employment opportunities, and the manner in which he was dispatched thereafter, corroborated in material respects by WEAC Manager Gregory, were clear, lucid, plausible, and persuasive. The motion was denied.

F. The collective bargaining agreements in effect on February 13, 1948

Since February, 1937, the collective bargaining agreements between the WEA and the ILWU have provided, among other things, for the registration, hiring, and dispatching of longshoremen through the joint hiring hall, and for preference of employment for ILWU members. Provisions corresponding substantially to those in the longshore agreements have been included in separate agreements covering ship clerks and checkers in the various ports. Unlike the longshore contracts, which have been negotiated on a coastwise basis, the checkers' contracts, though negotiated by the WEA on behalf of the regional associations and their respective members, on the one hand, and the ILWU, on behalf its respective locals, on the other, have resulted in separate contracts for the port areas. The discussion of these controversial issues, and the findings and ultimate conclusions, while generally dealing with the longshore contracts are intended to apply equally, unless otherwise indicated, to the corresponding provisions, practices and procedures, regarding ship clerks and checkers.

The last agreement, prior to the original hearing, generally referred to as the Coast Longshore Agreement, dated June 6, 1947, was for a term of 1 year from June 16, 1947, automatically renewable annually in the absence of 60 days' notice by either party. The agreement expressly incorporated by reference, and extended and renewed, as modified

by the instant agreement, the 1934 award, as amended on various dates between February 4, 1937, and November 17, 1946, and as interpreted by various arbitrators' awards.³⁹ An agreement, dated December 20, 1940, covering longshore work on steam schooners operated by WEA members, and adopting generally the provisions of the then existing agreement, was subsequently extended or renewed to coincide with the terminal date of the longshore agreement.⁴⁰ On February 3, 1948, the longshore agreement was amended to reflect an award by the Impartial Chairman, provided for

³⁹The parties to this agreement were the WEA, WEAC, WEP, since, the WEOC, and the WEW, designated as the Employers, on behalf of their respective members, and the ILWU.

⁴⁰At the time of the 1934 award, to which the WEA was not a party, only one of its members was engaged in the operation of steam schooners as well as "deep water" ships. Some 2 years later, the Sailors Union of the Pacific (SUP), representing deck crews of the steam schooners, and the ILA, which then represented the longshoremen, agreed to divide longshore work on steam schooners between them. The steam schooner agreement mentioned in the text provided generally that the 1934 award should govern longshore work by ILA members in connection with steam schooners operated by WEA members. The "return to work agreement," dated November 17, 1946, settling the strike of that year, defines the steam schooner, or as it is also known, the coast-wise trade as the operation of steam schooners between the ports of California, Oregon, and Washington, and between those ports and British Columbia and Alaska, excluding vessels operated between Seattle and Puget Sound ports and Alaska.

in the agreement, granting an increase in basic wage rates, effective February 10, 1948.

Checkers agreements, in effect at this time in the various port areas, had been executed on varying dates, and, as modified, were renewed and extended until June 15, 1948, the expiration date of the longshore contract. In the Oregon-Columbia River District, separate collective bargaining agreements, for hourly and monthly checkers, were entered, on June 14, 1937, between the Waterfront Employers of Portland, later the WEOC, and Supercargoes and Checkers Local 38-78-A, ILA, later succeeded by ILWU Local 1-40. The agreement was for a term ending September 30, 1937, subject to automatic renewal annually in the absence of 60 days' notice. An amendment increasing the basic wage rates was executed on March 10, 1942.

In the San Francisco Bay area, the contract between the WEAC and ILWU District No. 1, acting on behalf of Ship Clerks' Association, Local 1-34, was executed March 28, 1946, effective on a daily basis, subject to 24 hours' notice of termination.

In the Los Angeles-Long Beach Harbor area, the WEAC and Marine Clerks Association, Local 1-63, ILWU, entered into a contract, dated November 26, 1946, expiring June 15, 1947, subject to automatic renewal in the absence of 60 days' notice. On January 2, 1947, pursuant to provision for a wage review, an amendment was executed increasing basic wage rates.

Effective February 10, 1948, the checker agreements in each port, were further amended to reflect

the award of the Impartial Chairman granting a further increase in basic wage rates, corresponding to the one given longshoremen.

The Foregoing checkers' agreements were, in effect, consolidated by an agreement entered on June 16, 1947, whereby the WEA, on behalf of WEP, later WEOC, the WEAC, and their respective members, and the ILWU, agreed to execute a master agreement, "embracing those contract sections of the [clerks and checkers agreements above described] which are identical in substance," terminating on June 15, 1948, subject to automatic renewal in the absence of 60 days' notice.⁴¹ As modified by the June 16, 1947, agreement, the several clerks and checkers port agreements were to be renewed until June 15, 1948, and were to constitute "port supplemental and/or working rules" to the master agreement. The agreement, conditioned upon the consummation of satisfactory agreements, on or before June 16, 1947, between Pacific American Shipowners Association, known as PASA, and the National Union of Marine Cooks and Stewards, and the American Communications Association, was entered without prejudice to the

⁴¹Also to be included in this master agreement, were similar provisions appearing in a former agreement between the ILWU, on behalf of Local 46, and the Pacific Naval Air Base Contractors, not affiliated with any of the employer associations involved, dated July 1, 1942, but under which the WEAC had been operating in the Port of Hueneme, as such contract had been interpreted and applied by the Labor Relations Committee in that port.

position of either party under the Board's decision in Case No. 20-R-1690.⁴²

Although it is not altogether clear whether the master agreement was in fact executed thereafter, it is apparent that the parties regarded the terminal dates of each of the outstanding checker contracts as having been extended to June 15, 1948, to coincide with that of the Coast Longshore Agreement.

1. The hiring hall and related provisions in the
Coast Longshore Agreement

With respect to the hiring hall, and related matters, the June 6, 1947, Coast Longshore Agreement, generally patterned on the 1934 award, provided:

Section 4. The hiring of all longshoremen shall be through halls maintained and operated jointly by the [ILWU] and the respective employers' associations. The hiring and dispatching of all longshoremen shall be done through one central hiring hall in each of the ports of Seattle, Portland, San Francisco and Los Angeles, with such branch halls as the Labor Relations Committee, provided for in Section 9, shall decide. A branch hiring hall shall be opened in the East Bay area of San Francisco harbor. All expense of the hiring halls shall be borne one-half by the [ILWU] and one-half by the employers. Each longshoreman registered at any hiring hall who is not a member of the [ILWU] shall pay to the Labor Relations Committee toward

⁴²This reservation was apparently intended to preserve the ILWU's right to demand collective bargaining for checkers on a coastwise basis, and the Employers right to oppose it.

the support of the hall a sum equal to the pro rata share of the expense of the support of the hall by each member of the [ILWU].

Section 5. The personnel for each hiring hall with the exception of dispatchers, shall be determined and appointed by the Labor Relations Committee of the port. Dispatchers shall be selected by the Union through elections in which all candidates shall qualify according to standards prescribed and measured by the Labor Relations Committee of the port. If they fail to agree on the appropriate standards or upon whether a candidate is qualified under the standards, the dispute shall be decided by the Impartial Chairman or, at his discretion, by a Port Arbitrator.

Dispatchers shall hold office for one year and neither the constitution nor any rule of the Union or any of its locals shall abridge the right of the dispatcher to hold office for one year or to run to succeed himself as often as he may choose.

Both the Employers and the Union shall be permitted to maintain a representative in each hiring hall at all times.

Section 6. Preference of employment shall be given to members of the Pacific Coast District [ILWU] whenever available. This section shall not deprive the employers' members of the Labor Relations Committee of the right to object to unsatisfactory men (giving reasons therefor) in making additions to the registration list, and shall not interfere with the making of appropriate dispatching rules.

Section 8. The hiring and dispatching of long-shoremen in all ports covered by this award other than those mentioned in Section 4, and excepting Tacoma, shall be done as provided for the ports mentioned in Section 4; unless the Labor Relations Committee in any of such ports establishes other methods of hiring or dispatching.

Section 9. The parties shall immediately establish and maintain during the existence of this agreement a Coast Labor Relations Committee of seven (7) members, three (3) to be designated by the Union, three (3) to be designated by the Employers, and the seventh to be the Impartial Chairman who shall be designated in accordance with the provisions of this contract. There shall also be established and maintained throughout the existence of this agreement a Port Labor Relations Committee for each port affected by this agreement composed of three (3) representatives designated by the Employers Association of the port and three (3) representatives designated by the local Union. By mutual consent any Labor Relations Committee may change the number of representatives of the respective parties . . .

[Section 9 further authorized the Coast Labor Relations Committee to determine questions involving the interpretation of the agreement, and to decide disputes thereunder, and provided for the appointment of an Impartial Chairman with authority to determine issues unresolved by that Committee. In addition to presiding over the Committee, the Impartial Chairman was authorized to cast a

deciding vote in the event of a tie within the Committee, or upon request of either party; to preside as arbitrator at formal hearings; to select a port agent for each of the districts of Puget Sound, Columbia River, and Northern and Southern California; and to appoint a Port Arbitrator, upon the joint request of the parties in specific cases, to determine disputes unresolved by the Port Labor Relations Committee which, in the judgment of the Port Arbitrator, were not of coastwide significance. All decisions of the Impartial Chairman and of the Port Arbitrator were to be final and binding upon the parties. Expenses and compensation of the Impartial Chairman and the port agents were to be borne equally by the parties.]

Section 10. Subject to the control and direction of the Coast Labor Relations Committee, the duties of the Port Labor Relations Committee shall be:

(a) To maintain and operate the hiring hall;

(b) To have complete control of the registration lists of the regular Longshoremen of the Port including the power to make such additional registrations of the longshoremen as may be necessary; no longshoremen not on such a list shall be dispatched from the hiring hall or employed by any employer while there is any man on the registered list qualified, ready and willing to do the work;

(c) To decide questions regarding rotation of gangs and extra men; revision of existing lists of extra men and of casuals; and the addi-

tion of new men to the industry when needed;

(d) To investigate and adjudicate all grievances and disputes relating to working agreements;

(e) To decide all grievances relating to discharges. The hearing and investigation of grievances relating to discharges shall be given preference over all other business before the Committee. In case of discharge without sufficient cause, the Committee may order payment for lost time or reinstatement with or without payment for time lost;

(f) To decide any other question of mutual concern relating to the industry and not covered by this agreement.⁴³

2. Subsequent negotiations

Although the existing collective bargaining agreements did not require formal notice of intention to modify or terminate the contracts before April 15, 1948, on February 13, 1948, WEA President F. P. Foisie wrote the ILWU suggesting an early conference to consider the problem of conforming the contracts, when renewed, to the Labor Management

⁴³As originally drawn, the complaint alleged that, during bargaining negotiations since about February 21, 1948, the ILWU had demanded and insisted on the inclusion in any contract reached with the WEA, of Sections 4, 5, and 10, quoted above, in haec verba. It was not alleged in the complaint, or contended at the hearing, that the ILWU, during this period, had similarly insisted on the inclusion of Section 6, dealing with preference of employment.

Relations Act, 1947. Specifically, Foisie contended that the provisions in the Coast Longshore Agreement relating to preference of employment, control of registration, and the hiring hall, would conflict with the Act after June 15, 1948, the terminal date of the contract, and that it would be necessary to modify the contract, the various port supplements, and the working and dispatching rules thereunder to conform to the law.

A series of four exploratory meetings were held for this purpose between February 21, and April 5, 1948. Representing the parties at the first of these meetings, and, in general, thereafter, were some or all of the following, or their subordinates. Appearing for the WEA, President Foisie, Vice-President and General Manager Henry W. Clark,⁴⁴ Gregory A. Harrison and Marion B. Plant, of WEA counsel, Secretary James B. Robertson, and other WEA staff members;⁴⁵ for the ILWU, President Harry R. Bridges, Vice-President Germaine Bulcke, Messrs. Henry Schmidt and H. J. Bodine, union members of the Coast Labor Relations Committee, and other staff members of the ILWU, in-

⁴⁴Clark was also an employer representative on the Coast Longshore General Negotiating Committee, and an employer-member of the Coast Labor Relations Committee.

⁴⁵Present at the first meeting in an unofficial capacity, presumably because of his interest in similar issues involved in the contract between the Pacific American Shipowners Association, known as PASA, and the National Union of Marine Cooks and Stewards, a CIO affiliate, was PASA President James G. Bryan.

cluding Research Director Lincoln Fairley. Principal spokesmen for the respective parties were Attorney Harrison and President Bridges.

At the outset, Bridges denied that the provisions in question were in conflict with the Act, and recommended that the parties refrain from giving notice of termination, and permit the contract to renew itself. The suggestion was rejected.

As developed during these conferences, and elaborated in an exchange of memoranda, the position of the parties was substantially as follows: The Employers, though willing to continue the hiring hall as a means of dispatching longshoremen, insisted on exclusive employer control. They maintained that, in order to conform to the Act, it would be necessary to eliminate preference of employment to union members, selection of dispatchers by the Union, and participation by it through the Labor Relations Committee, in the making of additions to the registration list. The Union, on the other hand, while conceding that preference of employment based on union membership might conflict with the Act, maintained that the provisions relating to union selection of dispatchers, and joint control of the registration list were not incompatible with the Act. In this connection, Bridges contended that the Act did not undertake to regulate the selection of hiring hall personnel. Dispatchers under the control of the Labor Relations Committee, he maintained, do not hire, or even control hiring, but merely perform routine duties in dispatching in rotation persons on the registration list, which the

Employers have committed themselves to use. In addition, he pointed out, since Employers are at liberty to reject, for cause, any persons dispatched, it is obvious that Employers retain effective control over the selection of employees. Moreover, he argued, dispatchers who fail to observe the working and dispatching rules promulgated by the Labor Relations Committee subject themselves to censure or removal under the grievance procedure provided in the contract. The Employers, however, while conceding that this might be technically true, protested that in actual practice dispatchers enjoy considerable discretion which they exercise to favor union members, and to discriminate against non-union longshoremen.

Regarding the Employers' objection to union participation in control of registration, Bridges pointed to the provisions in the contract granting the employer representatives the right to resort to arbitration in the event of refusal by union members of the Committee to join in making additions to the registration list which the Employers desired. Parenthetically, he observed, the list already included persons whom the Union regarded as objectionable, but who had, nevertheless, been retained on the registration list.

Except for some area of agreement on the probable necessity for modifying the preference of employment provisions, the parties appeared to be in irreconcilable disagreement. In an attempt to resolve the conflict regarding selection of dispatchers, which he termed "a fighting issue," Bridges proposed that

authority to make such selection be vested in the Impartial Chairman, or alternatively, that the existing provisions be continued in effect until "a legal determination." Rejecting these suggestions, the Employers countered with a proposal that dispatchers be selected by the Director of Federal Mediation and Conciliation Service, FMCS herein, his appointee, or some other neutral person. This, the Union refused.

An employer suggestion that the hiring hall problem be settled by a union authorization election proved equally unacceptable. Consideration of the so-called "Lundeberg Formula" was abandoned when it was admitted by the Employers that it resulted, in effect, in an open shop.⁴⁶ Although ex-

⁴⁶The pertinent provisions in the contract between the Steamship companies in the inter-coastal, off-shore, and Alaska trades, and the Sailors Union of the Pacific, dated October 2, 1947, commonly referred to in the maritime industry as the "Lundeberg Formula," are:

Section 2. (a) The Employers agree in the hiring of employees in the classifications covered by this agreement to prefer applicants who have previously been employed on the vessels of one or more of the companies signatory to this agreement and the Union agrees that in furnishing deck personnel to employers through the facilities of their employment office it will recognize such preference and furnish seamen to the employers with due regard thereto and to the competency and dependability of the employees furnished; when Ordinary Seamen with prior experience are not available, the Union will in dispatching seamen prefer graduates of the Andrew Furuseth Training School.

(b) When an employer rejects men furnished

pressing a desire to resolve the hiring hall issues, Bridges firmly announced that the Union would oppose any change in practices which would restore the conditions which had prevailed prior to 1934. He suggested, however, that the Union might be willing to eliminate the preference clause entirely, substituting a provision for preference of employment, based on seniority, to registered longshoremen presently working in the industry, and, preference in new registrations, to longshoremen formerly registered and employed in the industry, who had not been dropped for cause or reasons other than lack of employment. Under this proposal, reductions in the registration list, necessitated by lack of work, would similarly be determined on the basis of seniority. Any new additions would be registered by the Labor Relations Committee, as provided in the existing contract, and disputes regarding such additions, resolved under the existing grievance procedure. Since, Bridges contended, these modifications would virtually result in open-shop conditions, he proposed that the contract be amended to relieve the Union of responsibility for disciplining its members for various infractions, including illegal work stoppages; to eliminate penalties for various

who are considered unsuitable or unsatisfactory, the employer shall furnish a statement in writing to the Union stating the reason for the rejection and the Union may thereupon refer the matter to the Port Committee and the Port Committee shall then hear the case.

Section 3. The employers agree not to discriminate against any man for legitimate Union Activity.

derelictions by longshoremen; and to provide that cessation of work by registered longshoremen, individually or in groups, should not constitute a violation of the contract, unless sponsored or authorized by the Union. Although the Employers expressed willingness to assume responsibility for disciplining longshoremen, they insisted that they would require assurance that any contract reached with the Union would be faithfully performed and observed.

A union proposal, on March 29, to continue the existing hiring hall provisions, subject to a so-called "savings clause," requiring renegotiation of these issues in the event of a legally binding decision invalidating the provisions, was rejected by the Employers.

G. Reopening of the contracts; subsequent negotiations

At this juncture, in a conference on April 5, 1948, the ILWU served formal notice reopening the Coast Longshore Agreement, which it coupled with the following contract demands: (1) continuance of the existing longshore hiring halls, with adequate guarantees that there would be no return to the hiring and employment practices which prevailed prior to 1934; (2) liberalization of vacation provisions; (3) unspecified basic wage increases; (4) elimination of existing contract provisions requiring the Union to discipline and impose penalties upon members for various infractions of rules and contract provisions; (5) reduction in work shift from 10 to 8 hours,

without reduction in take-home pay; (6) incorporation of Longshore Safety Commission recommendations; (7) 4 hours minimum pay to men ordered to work when no work is provided; (8) payment to longshoremen not dispatched when required to report to the hiring hall; (9) additional penalty payments for specified types of cargo; (10) coastwise, uniform skill differentials, (11) longshore health insurance plan; (12) longshore pension plan; and (13) weekly or monthly guarantee of a minimum number of hours work opportunity for registered longshoremen.

On April 12, the WEA also served notice of intention to amend the longshore agreement, as well as the steam schooner supplement, but notified the Union that before it would consider the latter's proposals, it would insist upon conformance to the law.

Next day, the ILWU served notice reopening the ship clerks' agreements. In addition to its hiring hall demands which corresponded generally to those affecting longshoremen, the Union demanded paid vacations for all clerks, supervisors, and supercargoes, qualifying within a prescribed formula; reestablishment of a 10 per cent differential for clerks over basic longshore rates; uniform wages for clerks, and differentials of 10 and 20 per cent over the basic clerks' rate for supervisors, supercargoes, and chief clerks; and inclusion in the agreement of all classifications in the unit described in NLRB Case 20-R-1690.

The same day, the WEA served notice reopening

the master agreement, and the several port agreements for ship clerks and checkers, and advised that the appropriate port associations would communicate with the locals involved. Again, mention was made of the requirement for conformance to the law.

When the parties met on April 15, 1948, Bridges furnished the WEA representatives with the formal demands, adopted by the ILWU Coastwise Longshore Caucus comprising, in addition to those already made, demands for (1) increased subsistence, (2) travel time at straight time or overtime rates, whichever was applicable; (3) a 2-year contract terminating June 15, with semi-annual wage reviews; (4) elimination of existing disciplinary and penalty provisions, (5) additional penalty rates, (6) a day off each week, and (7) a provision that cessation of work by longshoremen, individually or in groups, should not constitute a violation of the contract. WEA President Foisie insisted that the issue of conformance to law would have to be settled before the employers could entertain the Union's demands. Bridges urged that the hiring hall issues be reserved for later discussion, particularly since the Union had submitted a counter-proposal on those issues, and that the Union's demands be discussed to see what progress could be made. The Employers refused.

Although there was some desultory discussion of the Union's demands in conferences within the next few days, principal discussion revolved about the

WEA's insistence on first settling the issue of conformance to law, and the ILWU's equal insistence on discussion of its demands before dealing with the hiring hall issues. Bridges reiterated a proposal to continue the existing hiring hall provisions, subject to renegotiation in the event of an adverse Supreme Court ruling, but the Employers maintained that this could be accomplished only by proceeding through the Board. An employer proposal that the parties solicit an opinion on the hiring hall issues from the General Counsel, or seek a determination by filing an unfair labor practice charge, was rejected by Bridges.

On April 27, the WEA formally notified the FMCS of the existence of certain disputes within the meaning of Section 8 (d) (3) of the Act, and invited its intervention.

Next day, the parties met briefly on the matter of the clerks and checkers contracts. As in the case of the longshoremen, the Employers maintained that the issues of conformance to law would have to be settled before they would entertain the Union's demands. A union proposal that the hiring hall issues with respect to these employees be negotiated on a coastwise basis, was rejected, the Employers insisting that these issues be dealt with in supplementary agreements on a port basis. The Employers also advised the Union that they would insist on the exclusion of supervisors and supercargoes from the checkers units. Finally, it was agreed to defer further negotiations respecting these employees until agreement was reached with the long-

shoremen, and that, in accordance with traditional practice, the checkers' agreements would be patterned on the coast longshore agreement. Later that day, the WEA wrote the Union that it had notified the FMCS and the State Mediation Services in California and Oregon of the existence of the labor disputes with the Union.

In a formal reply, on April 30, to the Union's letter reopening the checkers' contracts, the WEA reiterated its position on contract conformance, and, after suggesting the availability of the union authorization procedures of the Act, advised the Union that the parties could conclude no agreement which permitted discrimination against non-union employees. The Union's proposals, including the demand for inclusion of supervisors in the unit, were summarily rejected.

No further meetings were held until May 11, when, for the first time, the parties met under FMCS auspices. In all, some 15 meetings, 2 some days, were held with the Conciliators. The last of this series was held on August 6, 1948.⁴⁷ At the request of the Conciliators, both parties reduced their respective positions to writing. Stressing the necessity for conformance to law, which they regarded as the paramount issue, the Employers re-

⁴⁷The meeting of August 6, though for the purpose of negotiations, was devoted primarily to an attempt to enlist the Union's support in obtaining the release of a vessel of a WEA member, which had been confined at Coos Bay, Oregon, as a result of a labor dispute in which the Union had been respecting picket lines of another union.

iterated their earlier proposals for (1) elimination of preference of employment based on union membership, and the substitution of preference based on registration, without discrimination on account of union membership; (2) exclusive right of the employers to select men for registration, but with joint determination as to the number of men to be added to or removed from the registration list; (3) preference in registration to men previously employed in the industry, who had not been dropped for cause or reasons other than lack of employment, seniority to prevail in the event of reductions from the registration list; and (4) elimination of union selection of dispatchers, substituting selection by the FMCS or some other impartial authority. Turning to what they termed substantive changes, the WEA proposed (1) elimination of mid-term wage review; (2) elimination of restrictions on cargo handling consistent with safety; (3) stabilization of the industry through special cargo gangs, steady men and steady gangs; (4) guarantees against work stoppages, and restrictions on activities of union business agents; (5) denial of the use of the hiring hall to employers, not members of the WEA, except by prior mutual consent of the Employers and the Union; and (6) conformance of the working and dispatching rules in the several ports to the foregoing proposals.

The Union's position consisted of demands for retention of the existing provisions for preference of employment, establishment of the Port and Coast Labor Relations Committees, joint control, through

the Labor Relations Committee, of the hiring hall, registration, and the organization and dispatching of gangs; hourly wage differentials for certain skills, and alternative vacation plans, including establishment of a vacation fund to be administered by the Union, covering dock workers, checkers, and clerks, with modification of the formula determining eligibility for vacations.

On May 24, Cole Jackman advised the WEA that he had been designated as negotiator for the ILWU ship clerks locals, and requested early consummation of a master agreement. He noted, however that before agreements could be concluded on behalf of checkers, it would be necessary to conclude agreements with other maritime unions having contractual relations with the WEA. Foisie replied that this requirement manifested lack of good faith, and, in view of the Union's position on the issue of conformance, recommended that further negotiations be conducted under FMCS auspices.

On May 25, the WEA notified the FMCS and Director Cyrus S. Ching, personally, that negotiations had proved futile. Warning that a strike in the industry would not only jeopardize overseas supplies to the Armed Forces, and the Economic Cooperation Administration program, but also adversely affect the public welfare, Foisie summarized the state of negotiations. He contended that basic disagreement stemmed from the issue of conformance to the Act, and, while maintaining that the Union's demands had been rejected as illegal, restrictive, or economically unsound, and manifesting

an attempt to avoid responsibility for contract observance, stated that the Employers were, nevertheless, prepared to consider the Union's proposals further, if the objections to the hiring hall issues could be overcome.

On June 3, 1948, by Executive Order No. 9964, the President appointed a Board of Inquiry under Title II, Section 206 of the Act, to inquire into labor disputes in the maritime industry, including those here involved. Meetings were held on June 7 and 8, and, on June 11, 1948, that Board issued its report to the President. On June 14, the Attorney General obtained from the United States District Court for the Northern District of California (Civil No. 28123-H), a temporary restraining order enjoining the ILWU, and other unions, and the WEA, WEAC, WEOC, WEW, other named employer associations and their members, and named individual companies, from engaging in strikes or lock-outs in the maritime industry. On June 23, the temporary restraining order was continued to July 4. On July 2, a preliminary injunction was issued, enjoining strikes and lock-outs for a period of 80 days from June 14, the date of the original temporary restraining order. On August 14, after further hearing held on August 10, the Board of Inquiry submitted its final report to the President.

In the interim, the parties continued to meet with the FMCS Conciliators. On June 16, in response to an employer request for specific proposals, the ILWU made its first specific wage demand for an 18 cents an hour increase in the basic rate, retroactive to June 15, 1948, with a corresponding differ-

ential for ship clerks, and added differentials for supervisors, supercargoes, and chief clerks. On June 22, the ILWU submitted to the Conciliators a consolidated list of its demands for the longshore, steam schooner, and ship clerk employees, which was transmitted to the WEA. On June 28, the WEA furnished the Union with a summary of its proposals to date, reiterating those it regarded necessary to conform to the Act, but making no wage offer.

On August 10, during the hearings before the Board of Inquiry, the WEA, at the request of that Board, submitted its last offer of settlement, as provided in Title II, Section 209 of the Act. Regarding the longshore and steam schooner agreements, the WEA proposed an extension to September 30, 1949, subject to automatic renewal annually in the absence of 60 days' notice, and renewed its earlier hiring hall proposals. On the Union's economic demands, it proposed a 5-cent increase in the basic hourly rate, with corresponding increase in overtime rates; a 9-hour work shift; a day off each week; limitation on the total number of hours longshoremen might work; 5 cents an hour straight time, and corresponding overtime pay, in lieu of vacations and vacation pay; increase in subsistence rates; elimination of wage review; and revision of all port working and dispatching rules to conform to the contract as amended.

Separate offers, with appropriate variations, including wage differentials, corresponding to the "last offer" to longshoremen, were made simul-

taneously by the various regional associations to the respective ILWU locals representing the clerks and checkers in the respective port areas. The offers provided, however, for the exclusion of super-cargoes, supervisors, chief supervisors, and hatch watchmen, where involved, from the clerks' units. Copies of these offers were mailed to officers of the local unions, and summaries furnished some 15,000 ILWU members, by the Employers.⁴⁸

No further meetings were held until Saturday, August 28, when the parties met at afternoon and evening sessions lasting some 5 hours. WEA Attorney Harrison expressed urgency for reaching agreement before the following Monday, when a threatened railroad embargo on all shipments to the west coast affecting freight and passenger service was to become effective.

In a memorandum submitted at this conference, the Union, in effect, adopted the Employers' proposals regarding preference of employment based

⁴⁸After submission to the President, of the Board of Inquiry's Final Report, the NLRB, pursuant to Section 209(b) of the Act, conducted a "final offer" ballot, on August 30 and 31, 1948, among employees of members of the WEA, and other groups not directly involved in this proceeding, in each of 12 groups listed in the Report. The results as to these employees, certified by the NLRB Executive Secretary on September 1, revealed:

Number of eligible employees (in all 12 groups)	26,965
Ballots marked "Yes".....	0
Ballots marked "No".....	0
Ballots challenged.....	0
Total ballots cast.....	0

on registration, and preference as to new additions to the registration list based on former employment, subject to qualifications already mentioned, but added two further qualifications. The first would deny registration to former longshoremen whose reemployment "would create unsafe conditions on the job or constitute a source of friction among the employees." The second would permit employees, individually or as groups, to refuse, without causing a breach of the contract, to work with men whose continued employment they regarded "dangerous or otherwise detrimental to safe and harmonious working conditions and relationships." Additions to or deletions from the registration list were to be without discrimination on account of union affiliation, race, creed, color, religious or political beliefs. The Union's economic demands remained substantially unchanged, and contemplated a contract to expire June 15, 1950, with provision for existing semi-annual wage review. Regarding ship clerks, the Union renewed its demands, including a coastwise agreement containing all existing provisions in the port supplements which were uniform or substantially identical. Finally, it was proposed that all other longshore and clerks' demands be subject to further negotiation, and arbitration, if necessary.

In its written proposal of August 28, the Employers offered to accept the Union's proposal of March 24, 1948, with respect to the hiring hall. This, it will be recalled, provided for (1) continuance of the existing provisions regarding selection of dispatchers, subject to renegotiation in the event

of a "legally binding decision of any court" invalidating those provisions; (2) preference of employment based on registration; (3) preference in additional registrations to persons formerly employed as registered longshoremen; (4) reduction of the number of men on the registration list, when required, on the basis of seniority; and (5) equalization of work opportunity. In addition, the Employers offered to eliminate the provisions dealing with discipline of members by the Union, but reserving to the Labor Relations Committee the power to discipline individual longshoremen. Further proposals included an offer to continue existing unit coverage, except for supercargoes; renewal of existing vacation plans, or, in the alternative vacation pay equivalent to 5 cents an hour straight time, and $7\frac{1}{2}$ cents overtime for each pay roll hour of employment; a 9-hour shift, with certain qualifications; an increase in the basic longshore rate of cents an hour straight time, and 12 cents overtime; a day off each week; continuance of the existing grievance machinery and arbitration; denial of the use of the hiring hall, except with the consent of the Associations, to non-member employers; and reasonable restrictions on activities of union business agents. With the foregoing amendments, the Employers offered to renew the existing contract until June 15, 1950, subject to one reopening on 60 days' notice prior to June 15, 1949, as to wages only, with the right to cancel on that date if no agreement was reached on that subject. The proposal was rejected. Reminded that the hiring

hall proposals were substantially those proposed early in the negotiations by the Union, Bridges, referring to intervening events since that proposal, including the issuance of the injunction, and the unfair labor practice complaint, observed that "the men" were in a "different frame of mind."

The parties met again next day, Sunday, August 29, and daily thereafter until the night of September 1, adjourning to hold separate caucuses, to draft further proposals and counterproposals, and returning to resume negotiations. Among other things, Bridges objected to the language in the proposed savings clause which provided for renegotiation in the event of an adverse decision by "any court" rather than a "final court." Other disputed issues involved the scope of the Impartial Chairman's authority under the contract; overtime compensation under the Fair Labor Standards Act; the right of longshoremen to elect whether to work with men whose presence they believed might create "inharmonious" conditions, or jeopardize the safety of others; and elimination from the contract of unspecified "obsolete awards."

During this period, the Union reduced its basic wage demands to 16½ cents an hour, and, later to 13 cents for straight time, with corresponding overtime rates, retroactive to June 15, 1948, on a contract to expire June 15, 1950, subject to existing provisions for wage review. The Employers increased their offer to 10 cents an hour straight time, plus overtime. Pressing for its more basic demands, the Union proposed that such issues as vacations,

statutory overtime, arbitration, elimination of obsolete awards, and other fringe issues, be deferred for further study and negotiation.

On August 30, as appears from its written proposal, the Union's position on the hiring hall issues appeared to have changed. It now proposed that the provisions dealing with the hiring hall, registration, and preference of employment be continued as in the expired contract, with the proviso that, in the event those clauses were "suspended in any way as a result of legal action," the agreement should terminate without notice. Further, if, prior to termination of the agreement, any employee or employer covered by the agreement undertook "by legal action" to change or eliminate the hiring provisions, refusal by employees to work with such employee or for such employer, was not to constitute a violation of the agreement. Next day, the Union, elaborating its position, proposed that the Employers furnish it with a "covering letter" stating that, "if hiring, dispatching and preference provisions are suspended in any way as a result of legal action or injunction proceedings, whether or not such proceedings are initiated by the employers," the agreement should terminate, without notice. Although the Employers finally acceded to the Union's hiring hall proposal, subject to the savings clause, they insisted that such provision be included in any contract reached between the parties. The Union refused, insisting that the proviso be covered in a separate letter. Both parties were equally adamant on this issue, and, although

other issues still remained unresolved, it is apparent that negotiations began to founder on this reef.

Concerned at the approaching "deadline," and the prospect of a strike if no agreement were reached, the Employers pressed for a definite commitment as to the duration of the impending "stop-work meeting," scheduled the morning of September 2, for the purpose, according to Bridges, of apprising the union members of the state of negotiations, and conducting a referendum on any proposed contract. The Union replied by letter that if its Coast Negotiating Committee could submit an acceptable contract to the membership, no strike would occur, and work would be resumed without waiting to complete details of ratification.

At a meeting on the afternoon of September 1, the Employers submitted a complete draft of agreement, embodying their final offer. The proposed agreement consisted of a tentative master contract between the ILWU, on behalf of itself and the locals involved, on the one hand, and the WEA, on behalf of itself, the WEAC, WEOC, and WEW, and their respective members, on the other, subject to ratification by the respective memberships of the parties. It provided for (1) immediate execution of the Coast Longshore Agreement, a copy of which was attached; (2) renewal without change of the steam schooner supplement for a term coextensive with the longshore agreement; and (3) renewal without change, except in stated respects, for a term of 1 year from June 15, 1948,

of the master agreement, dated June 16, 1947, as well as the port supplements covering ship clerks.⁴⁹ Among other provisions, the proposed master contract included a basic wage increase of 10 cents an hour straight time, and 15 cents overtime; a wage review on December 15, 1948, at the request of either party on 30 days' notice, with arbitration in the event of disagreement; 2 weeks vacation, with pay equivalent to 5 cents for each hour of straight time, and 7½ cents overtime, worked during the preceding calendar year; permission to business agents or qualified representatives of the Union to visit the employer's dock or vessel; and termination of all agreements simultaneously in the event of termination of the Coast Longshore Agreement.

The proposed Coast Longshore Agreement, incorporating by reference the 1934 Award, as amended from time to time, provided for a terminal date of June 15, 1949, subject to automatic renewal annually in the absence of 60 days' notice. In addition to the basic wage increase established in the master contract, the longshore agreement provided for differentials for penalty cargoes, and for varying skills; subsistence rates for lodging and meals; a vacation plan based on that in the master agree-

⁴⁹Also provided for was renewal, for the same term, of agreements covering carloaders, sweepers, dockworkers, and other categories of employees, not directly involved in these proceedings, for whom the ILWU bargained with the Associations, and executed contracts, generally following the pattern established in the Coast Longshore negotiations.

ment. A 9-hour shift, with certain qualifications, exclusive of travel time; a 40-hour week, with limitation on the total number of hours longshoremen might work in a specified period; a stated day off each week; and provision for renegotiation of overtime provisions in the event of amendment to the Fair Labor Standards Act, other legislation, or Supreme Court Decision, were also included.

With respect to the selection of hiring hall personnel, including the dispatcher, hiring and dispatching of longshoremen, preference of employment to union members, and establishment of the Coast, and Port Labor Relations Committees, the contract retained the identical provisions of the contract recently terminated.⁵⁰ A further provision, however, was added, denying the use of the hiring hall to employers who were not members of the WEA, except with its written consent.

Deferring to the Union's request, the designation, Coast Arbitrator, was substituted for that of Impartial Chairman, wherever it appeared in the former contract, and his duties, and those of Port Arbitrators, were specifically limited to issues involving interpretation of the agreement, or disputes thereunder, in contrast to the provisions in the expired agreement, which had authorized them to determine "any other questions of mutual concern not covered by this contract and relating to the industry."

⁵⁰For the actual language of these provisions, see Sections 4, 5, 6, 8, 9, and 10, quoted earlier at pp. 24, 25, and 26 corresponding to similarly numbered sections in the contract under consideration.

The provisions requiring the ILWU to enforce discipline of members for infraction of rules, misconduct or work stoppages, were deleted, responsibility therefor being reserved to the Port Labor Relations Committee. Retained, however, were provisions for union discipline of gang members who failed to report without sufficient notice to permit replacements by the Union.

Finally, it was provided:

Section 15. If registration, hiring, dispatching or preference provisions of this agreement are suspended in any way as a result of legal action or injunction proceedings, whether or not such proceedings are initiated by the employers, this agreement shall terminate and it is understood and agreed by the parties that notices concerning such termination of the agreement are waived.

Disagreement arose between Bridges and Harrison, as to when the contract would become effective, Bridges maintaining that it would require ratification by the respective memberships of the parties, first, Harrison contending that it would become effective immediately upon execution. After some desultory discussion of the provisions, on some of which there appeared to be an area of agreement, Bridges reminded the Employers that the parties could conclude no agreement, in any event, unless agreements were also achieved with the other maritime unions.⁵¹ Attorney Harrison remarked that he

⁵¹Reference was to National Union of Marine Cooks and Stewards, and Marine Engineers' Bene-

understood that to be so. At about 6 p.m., the Meeting adjourned until later that evening.

At 8 o'clock, September 1, the parties reconvened for the third time that day. Referring to the impending "stop-work meeting" and the approaching deadline, Harrison announced that he understood that if agreement were not reached by midnight, a strike would take place. Bridges insisted that the deadline was not until 10:30 the following morning, obviously referring to the expiration of the 80-day injunction. Observing that he did not consider the time consumed before the recess profitably spent, Harrison suggested the parties confine themselves to the vital issues. Bridges pointed out that the parties were still in disagreement as to the method of dealing with the "savings clause," in connection with the hiring hall provisions. This issue, Bridges stated, as well as the Union's demand for a 15 cents an hour basic increase, a 9-hour work shift, Sundays off, and the settlement of overtime provisions under the Fair Labor Standards Act, constituted "strike issues." Other issues, such as those dealing with vacations, the selection of an arbitrator, and elimination of "obsolete awards" from the contract, he stated, could be deferred.

Harrison observed that, since the other maritime unions were not meeting in bargaining conferences that night, there was no apparent likelihood that

ficial Association, both affiliated with the CIO, and Marine Firemen, Oilers, Watertenders & Wipers Association, Independent.

the parties here could reach agreement by midnight. The employer representatives retired briefly to caucus. Returning soon afterward, they announced the Employers' offer would remain open until midnight. When Bridges told them the offer was rejected, Harrison formally withdrew the offer, remarking, "We will see you later." Bridges retorted, "We will see you on the picket line," and the meeting ended.⁵²

H. The Strike; subsequent events

At midnight, September 1, 1948, all longshore work on the Pacific coast waterfront ceased. Next morning, the Union held its stop-work meetings, and soon afterward, the strike began, with pickets patrolling the docks of the Embarcadero. Except as hereinafter noted, commercial shipping on the west coast, during the 97 days of the strike, was practically at a standstill. Although ship stores, mail, and baggage from arriving passenger vessels was discharged, and some work was performed by two independent stevedoring companies, not members of the Association, no commercial longshoring

⁵²The findings in this section are based primarily on the credible and uncontradicted testimony of WEA Vice-President and General Manager Henry W. Clark, and to a lesser extent on that of WEAC Manager F. C. Gregory, corroborated substantially by minutes of various bargaining conferences, exchanges of memoranda, various proposals, and drafts of agreements in evidence. Testimony of Research Director Lincoln Fairley, the only witness called by the Respondents, although differing somewhat in emphasis, was not in substantial conflict with the testimony of Clark and Gregory.

was performed during the strike. As will presently appear, beginning about September 15, longshore work in connection with shipment of military cargo was performed by longshoremen, hired by the United States Army, as civilian employees under Civil Service regulations.

On September 2, the WEA and the Pacific American Shipowners Association, commonly referred to as PASA, notified the ILWU by letter, simultaneously released to the press, of a resolution, unanimously adopted by the members of both Associations, to refuse to bargain with any labor organization which failed to comply with the non-Communist affidavit provisions of the Act.⁵³ This statement of policy was later implemented by an announcement that the Employers would refuse to deal with "irresponsible union leaders," an obvious reference to Bridges and other union representatives.

On September 10, the ILWU replied by letter, also released to the press, advising that as a result of a secret referendum on the question of compliance with the non-Communist affidavit provisions of the Act, and the Employers' last contract proposal, which the Union asserted the Employers had mailed directly to the union members, despite the claim that the offer had been withdrawn, an overwhelming majority of the union members voted against both propositions. A purported tally of the ballots on each question, segregated as to job classi-

⁵³The language was substantially that appearing in Section 9 (h) of the Act.

fications, was furnished. The letter invited the Employers to resume negotiations, expressing willingness to "start from scratch," or continue from where they had left off the eve of the strike.

On October 16, Bridges again wrote the WEA, reiterating proposals allegedly made, in his capacity as ILWU president, over the radio and in newspaper advertisements, for the selection by secret ballot of a union negotiating committee composed exclusively of striking employees.

In his reply, WEA President Foisie stated that the composition of the negotiating committee was not "the key to our present impasse." He charged, "Your fourteen year party line record of irresponsibility and double-dealing proves that any contract which you and your leadership are ultimately to administer, no matter how or with whom negotiated, is worthless. The problem, as you well know, is the future administration and observance of any contract between ourselves and the ILWU, under its present leadership."

Construing Foisie's letter as a flat rejection of the Union's offer to negotiate a settlement of the strike, Bridges replied, accusing the Employers of attempting to foster establishment of a company-dominated union such as, he claimed, had been in operation prior to 1934, and reiterated the Union's determination to prevent a return to that era.

1. Army cargo

For some years prior to September 2, 1948, contractual relationships had existed between the

United States Army and various steamship, stevedore, and terminal companies for the transport of Army cargo. Agreements between the Army and the companies provided that these so-called contractors submit bids for the transport of such cargo as the Army might "tender" them. Provisions regarding wages, hours, and conditions of employment of longshoremen or clerks employed by the contracting companies were not covered by these agreements, but were left to collective bargaining between the employer associations and the unions. The Army's primary concern has been that the cargo should be transported to its overseas installations. On September 2, some 30,000 tons of mixed general cargo, destined for its overseas installations in Hawaii, Japan, and Guam, was ready and available for shipment.

Several days earlier, the Army learned, through channels as well as through its contractors, of the impending strike. When longshoremen failed to report for work on September 2, Lt. Colonel Sydney F. Hyde, Superintendent of the Water Division, Transportation Corps, at the San Francisco Port of Embarkation, notified the office of the Chief of Transportation in Washington. September 2nd occurred on a Thursday; Labor Day the following Monday. On Tuesday, September 7, Colonel Hyde communicated by telephone, and later by letter, with the individual contractors, both shoreside and marine, to ascertain whether if, despite the strike, the ILWU and the other marine unions agreed to handle Army cargo, the contractors would agree

to perform under their contracts. Each of the contractors replied that they would be unable to do so because of the existing labor dispute with the ILWU and the other unions involved.

Next day, at the request of ILWU President Bridges, a conference was held at the office of Major General Lester, commanding officer of the San Francisco port, at Fort Mason, to explore ways of exempting Army cargo from the strike. In addition to Major General Lester and other Army officers, Bridges, Bulcke, and representatives of the MEBA, the Firemen, and the Marine Cooks and Stewards, were present. Various proposals were made by Bridges and the representatives of other unions at the conference.

After reporting the results of this conference to Washington, the Army representatives notified its five stevedore contractors by letter of the ILWU offer to exempt Army cargo from the strike, and called upon them to perform under their contracts. Notifying its five steamship contractors to the same effect, the Army formally offered each a full shipload of dry cargo to be berthed on September 15, and a full refrigerator cargo to be berthed on or before September 16. On about September 11 or 12, Marine Firemen President Vincent Malone telephoned Colonel Hyde that all marine unions, except the MEBA, which had reached tentative agreement prior to the strike, calling for a 5.3 per cent increase, had acquiesced in the ILWU's offer to exempt all full loads of Army cargo from the strike under the terms proposed by Bridges.

By substantially uniform letters, dated September 13, all the steamship and stevedore contractors replied that they would be unable to perform under their respective contracts because of the existence of the strike. With the exception of one stevedore contractor, whose work was confined to Army passenger ships, and who performed under his contract until September 18, no contractors loaded or discharged Army cargo vessels until September 16.

Beginning on September 14, the Army began hiring longshoremen and dockside workers as Civil Service employees through the Army personnel office at Fort Mason. On the afternoon of September 15, the Army reopened its employment office at the Oakland Army base. Between September 14 and September 18, a total of about 300 longshore and clerical employees were hired at both bases. On September 18, the Army, through its Port Commander, executed a contract with the Mutual Stevedore Company, an independent company, which began moving cargo on the morning of September 21, with longshoremen and ship clerks obtained from the ILWU and the Ship Clerks Union.

Beginning on September 14, when the Army first began direct hiring of longshoremen and clerks as Civil Service employees, and until September 20, pickets appeared at Fort Mason. There is no direct evidence that these pickets were members of the ILWU or any of its affiliated unions; nor that they were directed or authorized by the Union or its affiliates to engage in picketing during the period in question, and at the place indicated.

The General Counsel's contentions that the picketing at Fort Mason was in protest at the Army's hiring of dockside employees through its own facilities, rather than through the hiring hall, and that this evidence substantiates the position that the strike was called to enforce the ILWU's demand for continuance of the existing hiring halls and practices, are discussed below.

1. Events after the close of the original hearing; execution of new collective bargaining agreements.

The original hearing in these cases closed on October 28, 1948, while the strike was still in progress.⁵⁴ Events occurring thereafter led to the reopening of the record, and resumption of the hearing on April 20, 1949.

As alleged in the amendment to the complaint, and established principally by stipulation of the parties, and pertinent exhibits received in evidence, the facts disclosed the following:

On about November 25, representatives of the ILWU and the WEA reached agreement, in principle, on the Coast Longshore and Ship Clerks Contracts. Beginning about December 2 or 3, picketing diminished, and, by December 6, pickets were wholly

⁵⁴Hearing in the Matter of National Union of Marine Cooks and Stewards, CIO, and Pacific American Shipowners Association, Case No. 20-CB-20, the companion case, involving substantially the same hiring hall issues, was commenced on November 1, 1948, and closed, initially, on November 12, 1948.

withdrawn, and the longshoremen and ship clerks returned to work. The strike was finally settled on December 6, 1948.

The Coast Longshore Contract between the WEA and the ILWU was dated December 6, 1948; the Ship Clerks Contract, January 17, 1949. A Port Supplement to the Ship Clerks Contract, between the WEAC and the Marine Clerks Association, Local 1-63, covering the Los Angeles-Long Beach area, was executed March 11, 1949; a Port Supplement, and Working Rules, between the WEOC and ILWU Checkers and Supercargoes Local 40, covering checkers, supervisors, and supercargoes at Portland, Oregon, on March 25, 1949. As of the date of the close of the hearing on April 21, 1949, no Port Supplement covering ship clerks in the Port of San Francisco, had been executed.

Since December 6, 1948, according to the stipulation, and registration, hiring, and dispatching procedures, and the practices thereunder, have been substantially the same as those which had existed prior to September 2, 1948.

1. The outstanding contracts

- a. The Coast Longshore Agreement

Execution of the basic Coast Longshore Agreement was accomplished by letter, dated December 17, 1948, addressed by the WEA to the ILWU, acknowledging that agreement had been reached on all portions of the agreement, except as to steam schooners, completion of which was anticipated

within a week. The letter advised that a complete draft of the longshore agreement was being prepared, copies of which would be furnished as soon as possible, and requested that the Union acknowledge the letter. In complying, Bridges and two other union representatives affixed their signatures to this letter on behalf of the ILWU.

The agreement itself, dated December 6, 1948, between the WEA, WEAC, WEOC, WEW, designated as the Employers, on behalf of their respective members, and the ILWU, was for a term from December 6, 1948, to and including June 15, 1951, subject to automatic annual renewal in the absence of 60 days' written notice, or unless terminated in accordance with other provisions in the agreement, or extended by mutual agreement. After defining longshore work, and the job classifications covered by the agreement, the contract provided for a basic hourly wage increase of 15 cents, with corresponding overtime rates, skill differentials, and penalty cargo rates, straight and overtime hours of work, minimum reporting pay, maximum work shifts, equalization of work opportunity and earnings, travel pay, subsistence, scheduled days off, holidays, sling load limits, safety provisions, grievance procedure, and numerous other subjects of collective bargaining. A wage review of basic straight and overtime rates, and negotiation of welfare and pension plans, at the request of either party, on September 30, 1949, and September 30, 1950, were also included with provision for arbitration by the

Coast Arbitrator, in the event of disagreement, on the wage issue only.

With respect to hiring, registration, and preference of employment, the agreement provided:

Section 7. Hiring Hall, Registration and Preference

(a) Hiring Hall

(1) The hiring of all longshoremen shall be through halls maintained and operated jointly by the [ILWU] and the respective Employer Associations. The hiring and dispatching of all longshoremen shall be through one central hiring hall in each of the ports, with such branch halls as shall be mutually agreed upon in accord with provision of Section 14 (c). All expense of the dispatching halls shall be borne one-half by the [ILWU] and one-half by the Employers.

(2) Each longshoreman registered at any hiring hall who is not a member of the [ILWU] shall pay to the Union toward the support of the hall a sum equal to the pro rata share of the expense of the support of the hall paid by each member of the Union.

(3) Non-Association employers shall be permitted to use the hiring hall only if they pay to the Association for the support of the hiring hall the equivalent of the dues and assessments paid by Association members. Such non-member employer shall have no preference in the allocation of men, but when there are not sufficient men available to

handle all the needs of the port shall be allocated men on the same basis as men are allocated to Association members.

(b) Hiring Hall Personnel

(1) The personnel for each hiring hall, with the exception of Dispatchers, shall be determined and appointed by the Labor Relations Committee of the port. Dispatchers shall be selected by the Union through elections in which all candidates shall qualify according to standards prescribed and measured by the Labor Relations Committee of the port. If they fail to agree on the appropriate standards or on whether a candidate is qualified under the standards, the dispute shall be decided in accord with provisions of Section 14 (a). The standards for Dispatchers shall be uniform among the several ports insofar as possible.

(2) All Dispatchers hereafter elected shall be permitted to hold office for the duration of this agreement, excepting only in those ports where dispatching is done on a part-time basis by a person holding union office and acting in a dual capacity.

Neither the constitution nor any rule of the Union or any of its locals shall abridge the foregoing provision.

(3) All personnel of the Hiring Hall, including Dispatchers, shall be governed by rules and regulations agreed upon by the Port Labor Relations

Committee, and shall be removable for cause by the Port Labor Relations Committee.

(4) The employer, when desired, shall be permitted to maintain a representative in the Hiring Hall at all times.

(c) Registration

(1) The Port Labor Relations Committee in any port shall have control over registration lists in that port, including the power to make additions to or subtractions from the registration lists as may be necessary.

(2) When it becomes necessary to drop men from the registration list, seniority on the list shall prevail.

(3) Longshoremen not on the registration list shall not be dispatched from the hiring hall or employed by any employer while there is any man on the registered list qualified, ready and willing to do the work.

(d) Preference

Preference of employment shall be given to members of the [ILWU] whenever available. Preference applies both in making additions to the registration list and in dispatching men to jobs. This section shall not deprive the Employers' members of the Labor Relations Committee of the right to object to unsatisfactory men (giving reasons therefor) in making additions to the registration list, and shall not interfere with the making of appropriate dispatching rules.

Section 14. Grievance Machinery

(c) Labor Relations Committees

(1) The parties shall immediately establish, and shall maintain during the life of this agreement, a Port Labor Relations Committee for each port affected by this agreement, an Area Labor Relations Committee for each of the four port areas (Southern California, Northern California, Columbia River and Oregon Coast Ports, and Washington), and a Coast Labor Relations Committee at San Francisco, California, each of said labor relations committees to be comprised of three representatives designated by the Union and three representatives designated by the Employers. By mutual consent any labor relations committee may change the number of representatives of the respective parties.

(2) Subject to provisions of Section 14 (a)⁵⁵ the duties of the Port Labor Relations Committees shall be:

- A. To maintain and operate the hiring hall.
- B. To have control of the registration lists of the port, as specified in Section 7 (c).
- C. To decide questions regarding rotation of gangs and extra men.
- D. To investigate and adjudicate all grievances and disputes according to the procedure outlined in Section 14 (a).

Annexed to, and denominated as an addendum to the Coast Longshore Agreement was the following:

⁵⁵Grievance machinery.

If registration, hiring, dispatching or preference provisions of this agreement are suspended in any way as a result of legal action or injunction proceedings, then such provisions shall be opened for negotiations for substitute provisions complying with the law, and the substitute provision hereinafter set forth shall apply for the period of negotiations:

- a. Working preference to registered men.
- b. In making additions to the registered list preference shall be given to men with previous registration in the industry and who were not dropped from the list for cause.
- c. In reducing the number of men registered in keeping with the requirements of the industry men last registered shall be first removed.
- d. Non-union men being dispatched through the hiring hall shall pay to the union an equal share of the cost of maintenance of the hiring hall and the procurement, administration, and enforcement of the contract, which sum shall not exceed that being then currently paid by members of the union in the form of dues and general assessments. Such non-union men shall be liable for said amounts only prospectively from and after the date this provision becomes effective, and only while such provision is effective.

Negotiations shall be carried on for a period of 120 days or until agreement is reached whichever is sooner. If agreement is not reached by the end of the 120 day period the above substitute provisions shall continue in effect.

In the event that any outside authority acts to nullify in whole or in part the above substitute provisions if invoked or any substitute provisions which may have been agreed to in negotiations the parties agree to resist such action. If nevertheless the provisions are nullified in whole or in part there shall be further negotiations for a period of not less than 120 days in an effort to agree upon new substitute provisions which comply with the law. In the event no agreement is reached within the 120 day period or in the event any agreement which may be reached is nullified in whole or in part either party hereto may cancel this agreement upon 5 days' written notice.

e. In the event the above substitute provisions are invoked as herein provided the first two paragraphs of subsection (f) of Section 14 of the agreement may be renegotiated and the third paragraph thereof shall be amended by adding thereto the following:

"It is also understood that either party may cite before the Labor Relations Committee any union or non-union longshoreman whose conduct on the job or in the hiring hall causes disruption of normal harmony in the relationship of the parties hereto and by action of the joint committee longshoremen found guilty of such conduct may be suspended or dropped from the registration list. The standards of conduct imposed hereunder shall be the same for all longshoremen."

b. The clerks and checkers contracts

As in the case of the Coast Longshore Agreement, execution of a master agreement covering ship clerks and checkers between the ILWU, acting on behalf of Marine Clerks Association Local 1-63, Ship Clerks Association Local 34, Supercargo and Checkers Union Local 40, and ILWU Local 46, and the WEA, on behalf of the WEAC and WEOC, assumed the form of a letter, dated January 17, 1949, confirming tentative agreement on all portions of the master agreement, excepting port supplemental rules, while the parties agreed to attempt to complete by February 15, 1949. The letter was signed on behalf of the Unions by members of the Ship Clerks Committee for the ILWU, and, on behalf of the WEA by F. C. Gregory and other WEA representatives. The agreement provided that, as supplemented by the port agreements, it should constitute the collective bargaining agreement between the parties, covering clerks and checkers employed by members of the Employer Associations in the Oregon-Columbia River, San Francisco Bay, Hueneme, Los Angeles-Long Beach Harbor and San Diego ports, excluding executives, as defined in port supplements. The delineation of job classifications was reserved for the port supplements. The term of the agreement, and provisions for wage review coincided with those in the Coast Longshore Agreement.

On March 11, 1949, the WEAC and the Marine Clerks Association Local 1-63, executed a port supplement relating to the Los Angeles-Long Beach

Harbor area, covering ship clerks, supervisors, and supercargoes.

Another port supplement, together with working and dispatching rules, was executed on March 25, 1949, effective March 28, 1949, between the WEOC and Supercargoes and Checkers ILWU, Local 40, covering hourly and monthly checkers, supervisors and supercargoes in the Oregon and Columbia River area.

With respect to hiring, registration, and preference of employment, the master agreement covering ship clerks and checkers contained substantially the same provisions, with appropriate modifications, as those in the coast longshore agreement. The port supplements, wherever executed, generally incorporated these provisions by reference, and, in the case of the Oregon and Columbia River supplement, elaborated the provisions regarding selection and registration of men.

Upon the basis of all the foregoing facts, the General Counsel alleges that the Respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A), 8 (b) (2), and 8 (b) (3), and Section 2 (6) and (7) of the Act.

J. Issues; contentions; conclusions

It is apparent that from the outset of the preliminary negotiations, one of the principal obstacles to solution of the hiring hall problem was the Union's evident conviction, broadly hinted by Bridges during the discussions, that the Employers, while insisting that their position was dictated by

the necessity for conformance to the Act, were actually bent on depriving the Union of its hard-won gains, achieved after a long and bitter struggle culminating in the 1934 strike. During the bargaining conferences, as well as in the Union's formal demands, Bridges repeatedly warned that the Union would oppose any return to the conditions which had prevailed prior to 1934. This was apparently equated by the Employers and, at the hearing, by the General Counsel, as an adamant refusal to enter into any agreement which did not include the hiring hall provisions of the 1947 contract. It is clear, however, that the conditions to which Bridges referred were the graft, favoritism, company unions, blacklisting, and indignities to which employees had been subjected during that era. These conditions have been the subject of long and painstaking studies by governmental and private agencies, generally arriving at the same conclusion—that “decasualization” of employees in the industry is an urgent necessity.⁵⁶

⁵⁶See, e.g., Report of The Maritime Labor Board to the President and to the Congress, March 1, 1940, received in evidence in the instant case, as well as in the NMU case, cited elsewhere. Other literature on the subject, offered by the Respondents and excluded, has been filed with the rejected exhibits. The term “decasualization” frequently appearing in the literature issued to denote various methods of registration and dispatching of longshore or other maritime employees as a means of dealing with the problem of uncertainty and irregularity in employment. The term connotes the antithesis of the “shape-up.”

Indisputably, the 1934 award, which introduced the principles of the joint hiring hall, registration, rotary hiring, equalization of work opportunity, limitation of sling loads, safety rules, and other salutary conditions of employment, had gone far toward ameliorating conditions in an admittedly hazardous industry, affording longshoremen a precarious livelihood. Viewed in this context, Bridges' statement assumes proper significance. His rejection of any proposal which he regarded as a "roof over the shape-up," anathema to longshoremen, can be readily understood. The Union's cynicism toward the Employers' concern for conformance to the law is, also, not surprising when regarded in the light of the Employers' obvious efforts to utilize the Act as a means of regaining exclusive control of hiring, registration, and dispatching of longshoremen.

These considerations, however, as both the Board, and the Court, have pointed out in the NMU case, in disposing of union arguments directed to the economic necessity for hiring halls in the maritime industry, "touch upon the wisdom of the legislation," and cannot affect the Board's determination of the issues.⁵⁷ Furthermore, in the face of the

⁵⁷Matter of National Maritime Union of America, C.I.O., et al., 78 N.L.R.B. 971, 978-979, enf'd 175 F. 2d 686 (C.A. 2). Nor, as the Board said in a later case, may it "engraft exceptions upon the congressional enactment because this now unlawful practice was sanctioned by custom in this particular [building construction] industry before 1947, or may be thought economically desirable or necessary." Matter of Daniel Hamm Drayage Company, Inc., 84 N.L.R.B., No. 56.

legislative history, it would be presumptuous to assume, as the Union suggests, that Congress has failed to give adequate consideration to the economic and other problems involved in the hiring hall in the maritime industry. Any possibility that Congress may not have intended to encompass within the ban on the closed shop the joint hiring halls as they have existed on the west coast, is dispelled by the statement of Senator Taft, appearing in the legislative history.⁵⁸ The hiring hall issues must, therefore, be resolved in terms of the allegations of the complaint within the framework of the Act.

Broadly stated, the General Counsel contends that the Board's decision in the NMU case, since affirmed by the Court, is dispositive of the issues in this case. He maintains that the mere fact that the hiring hall considered, there was under the exclusive control of the union is immaterial to the ultimate conclusion. The Respondents, on the other hand, contend that the provision, here, for joint control of the hiring hall by the Employers and the Union, through the Labor Relations Commit-

⁵⁸In presenting the Senate Bill, Senator Taft said, in part:

"In the first place, Mr. President, the bill does abolish the closed shop. Perhaps that is best exemplified by the so-called hiring halls on the west coast, where shipowners cannot employ anyone unless the union sends him to them. Cong. Rec., Senate, April 23, 1947, p. 3952.) (Emphasis supplied.)

Cf. also, remarks of Representative Havenner in the House, (Cong. Rec., House, April 16, 1947, pp. 3590-3591).

tee, sufficiently differentiates the two cases as to render the N.M.U. decision inapplicable. Whether the hiring hall as conducted and administered on the west coast is incompatible with the provisions of Section 8 (b) (2) and 8 (a) (3), need not turn on this narrow distinction. The Act renders it equally unlawful for an employer to discriminate, as for a labor organization to cause or attempt to cause an employer to discriminate, with regard to employment on the basis of union membership. The fact that an employer may acquiesce or participate in the discrimination renders the discrimination no less unlawful, but, on the contrary, results in a correlative violation on the part of the employer.⁵⁹

1. The alleged violation of Section 8 (b) (2)

The controversial provisions, which have been generally referred to as the hiring hall provisions, comprise the following separate, but integral, features:—the joint hiring hall, registration, selection of dispatchers by the Union, and preference of employment to union members.

⁵⁹Thus, e.g., it has been held that, where an employer entered into a closed-shop contract with a union, permissible under certain conditions, before the amendment of the Act, with knowledge that the union intended to use the closed-shop provisions as a means of reprisal against employees who had engaged in activities on behalf of a rival union, the employer violated Section 8 (3) of the former Act. *Wallace Corp. v. N.L.R.B.*, 323 U.S. 248.

a. The hiring hall

It is not contended that the maintenance of a hall as a medium for recruitment, hiring, and dispatching of employees is *per se* illegal.⁶⁰ The Employers, themselves, recognize the obvious advantages of such a system, asserted repeatedly in the negotiations, as they have at the hearing, that they have no desire to abolish the hiring hall itself. What they have insisted on, however, is the exclusive right to hire and dispatch employees without regard to union membership. Presumably, this would encompass the right of applicants for employment to use the hiring hall without restriction. The 1947 hiring hall provisions, it will be recalled, permitted non-union applicants to use the facilities of the hiring hall by paying their pro rata share of the operating expense. Assuming, but without passing on, the propriety of requiring such applicants to contribute to the cost of maintaining the hall, this provision does not establish that the hiring hall was available to non-union, as well as union members, on a non-discriminatory basis. On the contrary, the evidence conclusively establishes that such persons could be dispatched only after all

⁶⁰This was, in effect, conceded by Senator Taft, when he stated:

"If in a few rare cases the employer wants to use the union as an employment agency, he may do so; there is nothing to prohibit his doing so. But he cannot make a contract in advance that he will only take the men recommended by the union." (Cong. Rec., April 23, 1947, p. 3952.)

union members had been assigned. It is, however, obvious, that since the only discrimination in employment which the Act proscribes is that based on union membership, an arrangement whereby an employer undertakes to hire employees through a hiring hall exclusively, without regard to union membership, does not conflict with the provisions of the Act. The undersigned is not considering, for the moment, the question of the operation and administration of the hiring hall in actual practice, but merely that of the hiring hall itself as a medium of "decasualization."

b. Registration

The registration plan in effect during the period in question had its origin in the initial registration of longshoremen after the 1934 award. Eligibility for registration was then determined solely by previous employment in the industry for a stated length of time over a given period prior to the award. The manner in which additions to the registration list have since been made under the applicable provisions of the contract, has been discussed earlier. From this it is apparent that, although the union members of the Labor Relations Committee possessed the right to veto employer nominations for additions to the list, the applicable provisions did not expressly require or permit preference in registration based on union membership.

The provision for joint participation in decisions relating to registration appears to be neither unreasonable nor unlawful. Cogent reasons, presumably

recognized by the Employers in the past, exist for the participation by the Union in such determinations. The hazardous nature of the occupation, in which the lives and safety of longshoremen, working individually or in gangs, frequently depend on the skill, experience, and care of their fellow-employees, is only one of the considerations which renders selection of these men a matter of vital concern to longshoremen and their bargaining representatives. It is only necessary to observe, however, that such provision is not incompatible with the Act, so long as it does not by its terms or in its performance involve or contemplate discrimination based on union membership. That exercise of the veto by union members on the Committee has inevitably benefitted members of the Union by reducing competition for available jobs, cannot be disputed. Nor, that applicants for registration, i.e., employment opportunity, have been unable to acquire status as registered longshoremen, except with the mutual consent of the employer and union members of the Committee, or resort by representatives of either side to arbitration. So long as consent to the addition of longshoremen to the roster has been withheld for reasons other than union membership, the Act has not been violated. Nor does the curtailment, by agreement, of the Employers' right to select employees from any source other than the registration list render the provision unlawful under the Act. The law imposes no obligation upon an employer to hire any person who applies for employment, provided, of course, such employment

is not refused because of union considerations. By the same token, an employer may, without contravening the Act, agree with the recognized bargaining agent to confine his selection of employees to a registration list previously compiled by the parties, or to make his selection on any other basis, provided always that membership or non-membership in a labor organization is not the criterion for the selection.

It follows, therefore, that a union's demand and insistence during collective bargaining that the employer shall select employees from a roster or registration list, without regard to union membership, and the demand and insistence upon the right to participate in decisions concerning additions to or reductions from the list, do not violate the Act.

e. Selections of Dispatchers

During the negotiations, the Union consistently maintained, as it did at the hearing, that the provision permitting the Union to select dispatchers was not inconsistent with the Act. It contended that, despite the Union's right of selection, dispatchers were actually under the joint supervision and control of the Employers and the Union by means of the Labor Relations Committee. Moreover, the Union argued, dispatchers perform merely routine duties in dispatching longshoremen in rotation from a list, previously established by the Committee, which the Employers have committed themselves to use. Deviations from the hiring hall provisions, and dispatching rules, formulated by the Commit-

tee, the Union maintained, subject dispatchers to discipline or dismissal under the established grievance procedure, and, arbitration, if necessary.

The Employers, while conceding that, technically, this may be true, have contended that, in actual practice, dispatchers have disregarded these provisions, presumably, although this is not established by the record, on instructions from the Union. Thus, the Employers point to the practice whereby dispatchers, after exhausting the registration list, without the consent of employer members of the Committee, have filled available jobs, through members of affiliated or other unions, before affording other non-registered persons opportunity for employment; have accorded preference in employment as a clerk to Cole Jackman, a union representative, and registered longshoremen from another port, but not a registered clerk; have unilaterally refused to dispatch George Phelan, a clerk, and True Knowledge, a longshoreman, despite the fact that they were duly registered men. In addition, the Employers offered evidence that dispatchers frequently exceeded their authority by unilaterally varying the weekly maximum hours of work, and by laying off and "making up" gangs without reference to the rules established by the Committee.

The Union, without admitting these facts, contends that if this has occurred a remedy was available under the contract and dispatching rules for disciplining dispatchers who engaged in such conduct. The Employers, while admitting that they have been lax in enforcing obedience in this respect

to the contract provisions and dispatching rules, point to instances, notably the case of True Knowledge, in which they have resorted to the grievance procedure, and, with respect to the laying off and making up of gangs, to arbitration, which was pending when the contract expired.

Nothing in the Act, however, prevents an employer from agreeing to delegate to the exclusive bargaining agent of the employees, the right to designate an employee, such as the dispatcher, here, who performs merely routine functions, provided such delegation does not result in discrimination based on union membership, or involve unlawful aid or assistance to the Union. It is not alleged or contended, here, that the Respondents, by their insistence upon the right to select dispatchers, who, incidentally, are not required to be union members, have violated Section 8 (b) (1) (B).⁶¹ Moreover, it is clear on this record that dispatchers do not participate in collective bargaining or the adjustment of grievances. Their duties are confined to the immediate supervision of the hiring hall, and the dispatching of employees in accordance with a previously devised plan. It is, therefore, found that the provision for union selection of dispatchers, does not by its terms conflict with the Act.

⁶¹Section 8 (b) (1) (B) provides, in part:

It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances . . .

The question to be determined is whether, in view of the instances of discrimination in the practical application of this provision, disclosed by the record, at a time when, as the Union contends, contractual provision for preference of employment based on union membership was permissible under the Act, it is to be reasonably anticipated that such discriminatory practices will be continued in the future, in disregard of the new provisions of the Act proscribing such conduct. In resolving this question, the Union's offer, during the preliminary negotiations, to relinquish preference of employment based on union membership, and to substitute preference based solely on registration may have some relevance. Had the Union maintained this position throughout, a conclusion might have been warranted that the Union sincerely intended to abandon any discriminatory practices arising out of union membership. Since, however, as the record discloses, the Union later shifted its position, and renewed its demands for what amounted to closed-shop conditions, it must be concluded that future discrimination in the application of the provisions relating to dispatchers was contemplated.

The undersigned, therefore, concludes and finds that, although the provision for union selection of dispatchers was not inherently discriminatory with respect to non-union members, it was administered and applied so as to result in such discrimination. It is further found that the Respondents contemplated that such discrimination would continue in

the future if the provision were included in a new contract.

d. Preference of Employment

This leaves for consideration the provision for preference of employment by reason of union membership. It is clear, and the Union does not seriously dispute that such preference, whether of the closed shop, union shop or preferential hiring type, except to the extent and under the circumstances permitted by the proviso to Section 8 (a) (3), is clearly proscribed by the Act. It is therefore found that the provision for preference of employment to union members contained in the 1947 contract was violative of the Act.

e. The Provisions in Practical Application

It has been found that the hiring hall, under the joint control and supervision of employer and union representatives, as a device for recruiting, hiring, and dispatching employees, is not intrinsically violative of the Act. Similarly, it has been found that maintenance of a roster or registration list of qualified employees, which employers agree to use in dispatching employees according to a rotary system, without regard to union membership or affiliation, is equally compatible with the Act. As a corollary, agreement by employers to permit the employees' exclusive bargaining agent to participate in determinations regarding additions to or removals from the registration list, insofar as such determinations are not influenced by considerations

of union membership or affiliation, does not, per se, conflict with the Act. So, too, delegation by the employers to the duly recognized bargaining representative, of the right to select dispatchers, subject to control and supervision of a joint employer-union committee, under circumstances and subject to qualifications already mentioned, does not contravene the provisions of the Act. On the other hand, it has been found that provision for preference of employment based on union membership is clearly proscribed by the Act.

Although each of the so-called hiring hall provisions, with the exception of union preference, has not, in itself, been found to conflict with the Act, it is apparent, and the undersigned finds, that in the practical operation and administration of the hiring hall, these provisions, especially when combined with preferential hiring based on union membership, have resulted in discrimination against non-members. The record discloses, however, that during the early stages of the negotiations, the Respondents offered to give up preferential hiring based on union membership, and to substitute preference based on registration and seniority, without regard to union membership. It is, therefore, appropriate to consider whether, if the remaining provisions upon which the Union insisted were continued in any agreement, and administered as they had been in the past, discrimination would be likely to occur in the future. The evidence concerning past discriminatory practices, the extent to which the hiring hall has been available to non-union

longshoremen (with due allowance for the existing union preference), and the discriminatory conduct in which dispatchers have been found to have engaged, convinces the undersigned that, even if the Union relinquished preference of employment for its members, without change in the remaining hiring hall provisions, the discrimination which has developed through hiring hall practices in the past would be perpetuated in the future. It is reasonable to infer, and the undersigned infers and finds, that the Respondents contemplated that, even without union preference, the hiring hall provisions, if continued, would be administered and enforced in the future so as to discriminate in favor of members of the Union and against non-members, in violation of the Act.

Assuming, however, that the provisions, in practical application, if not in terms, were discriminatory within the meaning of the Act, it does not follow that the mere demand, however vigorous and emphatic, without more, for inclusion of such provisions is sufficient to sustain a finding that the Union has caused or attempted to cause the Employers to discriminate against employees on account of union membership. This view appears to be supported by the legislative history dealing with Section 8 (b) (2).⁶²

⁶²Senator Taft's remarks in this connection, when he presented the conference bill to the Senate, are revealing:

Paragraph (2) [of Section 8 (b)], which makes it an unfair labor practice for a labor

It is clear from the record that not until the final stages of the negotiations did the Respondents or their representatives threaten to strike over the hiring hall issues. WEA Vice-President and General Manager Clark, himself, testified that the hiring hall did not become a "strike issue" until the last bargaining conference before the strike. Even assuming that, on the basis of their experience in collective bargaining with the Union during the past 14 years, the Employers could reasonably have concluded that failure to reach an accord would inevitably result in a strike, such a conclusion cannot be equated with a strike threat. Moreover, it does not follow that the Employers would have been justified in concluding that a strike would ensue even if agreement were reached on all issues save the hiring hall.^{62½} The record warrants no

organization to cause or attempt to cause an employer to discriminate against employees, departs from the text of the corresponding paragraph in the Senate amendment in two respects. The original Senate language used the words "to persuade or attempt to persuade."

The House conferees objected on the ground that it seemed inconsistent with the provisions guaranteeing all parties freedom of expression. The conferees clarified this language so that it reads "to cause or attempt to cause." (Cong. Rec., June 5, 1947, p. 6600.) (Emphasis supplied.)

^{62½}The undersigned has not overlooked the evidence relating to the proceedings under Title II, Section 206-210 of the Act, dealing with national emergencies. While this evidence may establish that

finding, at least until the final stages of negotiations, that the Respondents had manifested a determination to avoid reaching any agreement which did not provide, in terms or, in effect, for the hiring hall contained in the 1947 contract.

After August 30, 1948, however, the Union appeared to have changed its position regarding its original proposal to substitute registration, for union membership, as a basis for preference of employment, and insisted on retention of all the hiring hall provisions, subject to the "saving clause." At this stage, the Respondents made it reasonably apparent that they would strike unless their demands on all unsettled issues, including the hiring hall, were met. Thus, on August 30, James Kearney, president of ILWU Local 10, notified WEAC Manager Gregory, who, in turn, communicated this advice to WEA Vice-President and Manager Clark, that the Union had ordered stop-work meetings of both the longshoremen and checkers to begin midnight, September 1, and to last indefinitely. That the likelihood of strike action was imminent is further evident from the Employers' insistence upon a definite commitment as to the probable duration of the stop-work meetings.

The Respondents, however, contend that the strike was called, not to enforce their hiring hall

a strike was reasonably to be anticipated if the existing contracts expired without agreement, it does not establish that the Respondents had threatened to strike in order to enforce their hiring hall demands.

demands, on which they claim the parties had reached substantial agreement, save for the method of dealing with the savings clause, but to enforce their so-called economic demands. ILWU Research Director Fairley, however, in his testimony, after some equivocation, conceded that disposition of the savings clause, at least, remained a strike issue at this time.

It is obvious that the hiring hall was not the only issue then involved, and that disagreement existed not only with respect to the Union's economic demands, such as wages, hours, vacations, unit coverage, arbitration, and statutory overtime, but also as to the Employers' demands for restriction of the use of the hiring hall to Association members, limitation upon the activities of union business agents, and compensation for overtime under the Fair Labor Standards Act in consequence of the Supreme Court decision. It is also clear from the record that both sides had early taken the position that no agreement would be consummated unless agreement were reached on all issues.

The General Counsel contends that any doubt that the hiring hall demands were a principal strike issue is dispelled by the evidence that "the ILWU immediately engaged in mass picketing at Fort Mason when the Army, with whom it had no dispute, attempted to hire longshoremen through its own personnel office in an effort to load its own cargo ships." In further support of his position, the General Counsel points out that "when the Army secured the services of an independent con-

tractor, who in turn obtained longshoremen through the hiring hall, the ILWU at once removed the pickets." Since, he further contends, the object of the picketing was to cause the Army to cease hiring longshoremen through its own facilities, and to hire through the hiring hall instead, the conclusion is inescapable that attainment of hiring hall conditions was a primary object of the strike.⁶³ The difficulty with the General Counsel's position is that the evidence fails to establish that the pickets were members of any of the Respondent Unions; that they had been instructed, directed or authorized by the Respondents to engage in picketing at the time and place in question; or that such conduct had been approved or ratified by the Respondents. Assuming, however, that the evidence can support an inference that the picketing was legally attributable to the Respondents on established principles of agency, this evidence does not establish that the object of the picketing at Fort Mason was to compel the Employers to yield to the Respondents' hiring hall demands. It is equally reasonable to infer that the purpose of the picketing was to publicize the existence of the labor dispute, and to enlist support for the Union's economic demands. The undersigned concludes and finds, therefore, that this evidence alone fails to establish that a principal object of the strike was to compel

⁶³No violation of Section 8 (b) (4) is alleged or involved, inasmuch as the U. S. Army is, of course, excluded from the definition of employer in Section 2 (2) of the Act.

the Employers to capitulate to the Union's hiring hall demands.

It is apparent, however, apart from this evidence, on the record as a whole, that, from on or about August 30, 1948, the Respondents' hiring hall demands constituted an integral part of their economic demands, and that these demands were, at least, a factor in the Union's determination to strike. The Respondents admit that the question of whether the savings clause should be contained in a separate letter rather than in any collective bargaining agreement reached, was a strike issue.⁶⁴ It is unrealistic to believe that the Union would have engaged in a strike upon this narrow aspect of the hiring hall issue, if the broader issue itself were not also involved.

It is well established that where one engages in conduct motivated by considerations which may be lawful, as well as those which may be unlawful, the duty devolves on such person "to disentangle the consequences for which [he is] chargeable from those for which [he is] immune."⁶⁵ The under-

⁶⁴In view of the ultimate resolution of the hiring hall issues, it is unnecessary to consider whether the Respondents' refusal to include the savings clause in a contract would have constituted a refusal to bargain under the decisions of *Heinz Co. v. N. L. R. B.* 311 U. S. 514, 523-526, and *N. L. R. B. v. Todd*, 173 F. 2d 705 (C. A. 2).

⁶⁵*N. L. R. B. v. Remington-Rand, Inc.*, 94 F. 2d 862, 872; *N. L. R. B. v. Stackpole Carbon Co.*, 105 F. 2d 167, 176; *F. W. Woolworth Co. v. N. L. R. B.*, 121 F. 2d 658, 663; and *N. L. R. B. v. The Barrett Co.*, 135 F. 2d 959, 962.

signed considers this salutary principle dispositive of the Respondents' contention that the object of the strike was primarily to enforce the Union's economic demands.

From August 30, 1948, when the hiring hall as a strike issue became manifest, and from and after September 2, when the strike actually became effective, the Respondents remained on strike until December 6, 1948, when the Employers, finally yielding to the Union's demands, executed collective bargaining agreements containing the hiring hall provisions, including preference of employment to union members, which the Respondents had demanded.⁶⁶ That the Employers, in capitulating to the Respondents' demands on the hiring hall issues, also acceded to certain of their economic demands, does not, of course, preclude a finding that continuation of the existing hiring hall was an objective sought to be achieved by the strike.

It is, therefore, found that, by demanding and insisting, on and after August 30, 1948, upon the inclusion, in any collective bargaining agreement, of the aforesaid hiring hall provisions; by thereafter, authorizing and engaging in a strike a substantial objective of which was the achievement of hiring hall conditions, which in express terms or in their performance, cause or attempt to cause

⁶⁶The provision or "savings clause" relating to renegotiation of the hiring hall sections of the contracts, in the event of an adverse legal determination, does not, of course, immunize the hiring hall provisions from attack.

employers to discriminate against employees on the basis of union membership; and by obtaining the execution of such contracts, on and after December 6, 1948, the Respondents have engaged and are engaging in unfair labor practices within the meaning of Section 8 (b) (2).

The Respondents' contention that no violation of Section 8 (b) (2) or 8 (a) (3) can be sustained unless and until it is proved that they have engaged in acts of discrimination against specific individuals, has been dealt with, and fully answered, by the Board in the NMU case, already referred to, and is rejected for the reasons there stated.⁶⁷

2. The alleged violation of Section 8 (b) (3)

a. The appropriate unit of longshoremen; majority representation in said unit.

The complaint alleges that all employees performing longshore work⁶⁸ including longshoremen,

⁶⁷See, also, Matter of American Radio Association, C. I. O., et al., and Committee for Companies and Agents, Atlantic and Gulf Coasts, Radio Officers, 82 N. L. R. B., No. 151; Matter of Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. L., et al., and The Great Atlantic and Pacific Tea Co., 81 N. L. R. B., No. 164, and cases cited.

⁶⁸Longshore work, as defined in the outstanding collective bargaining agreement, substantially adopting earlier definitions since the 1934 award, consists of "all handling of cargo in its transfer from vessel to first place of rest, and vice versa, including sorting and piling of cargo on the dock, and the

gang bosses, hatch tenders, winch drivers, donkey drivers, boom men, burton men, sack turners, side runners, front men, jitney drivers and lift jitney drivers employed by member companies of the WEA, as shown on Appendix A, constitute, and at all times material herein, have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. The Respondents having failed to meet this allegation in their answer, it is deemed admitted.

Upon the basis of the foregoing, and upon the entire record, the undersigned finds that the unit above described, exclusive of supervisors, within the meaning of the Act, is appropriate for the purposes of collective bargaining, and that such unit will assure to these employees the fullest freedom in exercising the rights guaranteed by the Act.⁶⁹

The complaint further alleges that, since prior to June 6, 1947, and at all times material thereafter a majority of the employees in the unit above

direct transfer of cargo from vessel to railroad car or barge, or vice versa, when such work is performed by Employees of the companies parties to this agreement.”

⁶⁹Although neither the complaint nor the collective bargaining agreements in the past have specifically excluded from the unit longshoremen in ports of Tacoma, Anacortes, and Port Angeles, employees in those ports have, as will presently appear, been represented by the ILA. It is evident that the parties have not intended to include these employees in the unit, and the above determination is not intended to vary the unit for which the parties have bargained.

described have designated the ILWU as their representative for purposes of collective bargaining with the WEA on behalf of the member companies shown on Appendix A, and that at all times material since, the said ILWU has been the exclusive representative of all employees in the unit described above for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment within the meaning of Section 9 (a). The Respondents' answer makes no reply to this allegation, and it is, therefore, deemed admitted.

ILWU District No. 1 was originally certified by the Board, on June 21, 1938, in a Decision and Certification of Representatives, as exclusive representative of "the workers who do longshore work in the Pacific Coast ports of the United States for the companies which are members of Waterfront Employers of Seattle, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco, and Shipowners' Association of the Pacific Coast" [predecessors of the present associations].⁷⁰ On June 16, 1941, however, on a petition filed by the ILA, the Board directed an election between ILA locals in each of the three ports of Tacoma, Anacortes, and Port Angeles, and ILWU District No. 1, to determine the collective bargain-

⁷⁰Matter of Shipowners' Association of the Pacific Coast, et al., 7 N. L. R. B. 1002, in which the circumstances of the change of affiliation from the ILA to the ILWU are also described.

ing representative in each of said ports.⁷¹ As a result of this election, the Board, on July 29, 1941, certified each of the three ILA locals as exclusive representative of longshoremen in the respective ports of Tacoma, Anacortes, and Port Angeles.⁷² So far as the record discloses, longshoremen in each of these ports have been represented since by the ILA locals.

Since then, collective bargaining agreements have been executed between the WEA and the ILWU, covering longshoremen employed by members of the WEA on the Pacific Coast. The last agreement prior to the opening of the original hearing expired on June 15, 1948. The current agreement expires on June 15, 1951, subject to automatic renewal.

Upon the basis of the foregoing, and the entire record, including the evidence relating to the strike of September 2, in which all longshoremen in the unit herein found to be appropriate participated, the undersigned concludes and finds that, since June 6, 1947, at least, and at all times material herein, the ILWU has been the exclusive representative of all employees in the unit described above for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment within the meaning of Section 9 (a) of the Act.

⁷¹Matter of Shipowners' Association of the Pacific Coast, et al., 32 N. L. R. B. 668.

⁷²Matter of Shipowners' Association of the Pacific Coast, et al., 33 N. L. R. B. 845.

b. The appropriate units of ship clerks and checkers; majority representation in said units

(1) The San Francisco Bay area

The complaint alleges, but the Respondents' answer denies, that all clerical workers, exclusive of supervisory employees, who receive, deliver, check the loading or discharging, or spot ship's cargo to or from marine terminals, employed, in the San Francisco Bay area, by member companies of the WEAC, as shown on Appendix A, constitute, and at all times material herein, have constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

The complaint further alleges that, on and before March 30, 1946, a majority of the employees in the above-described unit had designated ILWU Ship Clerks' Association, Local 34, as their representative for the purposes of collective bargaining with the WEAC, and that at all times material since, the said Union has been the exclusive representative of all the employees in the unit above described for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(2) The Los Angeles-Long Beach area

The complaint alleges, but the Respondents' answer denies, that all dock checkers, tally clerks, coopers, spotters, and hatch watchmen, exclusive of supervisory employees, employed in the Los

Angeles-Long Beach Harbor area, by member companies of the WEAC, as shown on Appendix A, constitute, and at all times material herein, have constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

The complaint further alleges that, on and before November 26, 1946, a majority of the employees in the unit above described had designated ILWU Marine Clerks Association, Local 1-63, as their representative for the purposes of collective bargaining with the WEAC, and that at all times material since, the said Union has been the exclusive representative of all employees in the unit above described for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(3) The Oregon-Columbia River area

The complaint alleges, and the Respondents' answer denies, that all checkers, exclusive of supervisory employees, employed in the Oregon-Columbia River District, by member companies of the WEAC (formerly WEP), as shown on Appendix A, constitute, and at all times material herein have constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

The complaint further alleges that, on and before July 26, 1946, a majority of the employees in the unit above described had designated ILWU Local

1-40 (formerly ILA Supercargoes and Checkers Local 38-78-A), as their representative for purposes of collective bargaining with the said WEOC, and that at all times material since, the said Union has been the exclusive representative of all employees in the unit above described for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

The Respondents, though denying the appropriateness of the units described above, and affirmatively alleging that the appropriate unit of ship clerks and checkers is that described in the Board's Decision and Direction of Election, issued September 28, 1946,⁷³ make no response to the allegations of majority status of the respective locals in each of said units. These allegations are, therefore, deemed admitted. In the amendment to their answer, filed on October 26, 1948, the Respondents "admitted" that none of the units alleged to be appropriate included "persons who are supervisors within the meaning of Section 2 (11) of the Act."

The Decision, Direction of Election, and Order, to which the Respondents advert, resulted from an amended petition for investigation and certification of representatives filed on June 3, 1946, by the ILWU, seeking a unit of all ship clerks, checkers, supervisors, and supercargoes, who work in Pacific Coast ports for member companies of one or more of the Associations (WEA, WEAC,

⁷³Matter of Waterfront Employers Association of the Pacific Coast, et al., 71 N. L. R. B. 121.

WEOC, formerly WEP). In effect, the ILWU sought to combine in a single coastwide unit the clerks and checkers then bargained for in four separate area units, comprising the areas of Northern California, Southern California, Washington, and Oregon.⁷⁴

In its Decision referred to above, the Board indicated that, although "a single multiple-employer unit [of checkers], coastwide in scope and coextensive with the membership of the several employer associations" was appropriate, a separate unit of checkers employed in the Washington area by member companies of WEW, might also be appropriate. The Board, therefore, directed an election among checkers employed in the State of Washington, exclusive of the Columbia River ports, by member companies of the WEW and the WEA, to determine whether they desired to be represented by

⁷⁴Prior to 1943, bargaining in each of these areas was conducted between the respective regional employer associations then in existence and the local clerks or checkers unions. Although, as has been indicated elsewhere, the Waterfront Employers Association of San Francisco, representing employers in Northern California, and the Waterfront Employers Association of Southern California, representing similar employers in Southern California, merged in 1943 to become the WEAC, bargaining with respect to clerks and checkers appears to have been conducted separately in California on the basis of the Northern and Southern areas. For a comprehensive history of collective bargaining regarding these classifications of employees, see *Matter of Waterfront Employers Association of the Pacific Coast*, 71 N. L. R. B. 121.

the ILA or the ILWU. Regarding checkers in the Oregon, and Northern and Southern California areas, the Board decided it was unnecessary to direct an election, inasmuch as the ILWU had been recognized as majority representative of these employees, and its status in those three combined areas had not been questioned. The Decision provided that, in the event the employees in the Washington area selected the ILWU as bargaining representative in the election, they would have indicated a desire to be bargained for as part of a unit of all checkers employed on the Pacific Coast by members of one or more of the employer associations. If, however, they selected the ILA, they were to be regarded as having indicated a desire to constitute a separate appropriate unit.

On May 13, 1947, following this election, the Board certified the ILA as exclusive representative of checkers employed in the State of Washington, exclusive of the Columbia River ports, by employer members of either the WEW, the WEA, or both.⁷⁵ Except in the Washington area, exclusive of the Columbia River ports, where they have been represented by the ILA, clerks and checkers on the Pacific Coast have since been represented by the ILWU, through its affiliated locals. Apart from findings in its Decision and Direction of Election, the Board has never certified the ILWU as

⁷⁵Matter of Waterfront Employers Association of the Pacific Coast, et al., Supplemental Decision and Certification of Representatives, Case No. 20-R-1690, issued May 13, 1947. (Unpublished.)

exclusive representatives of the ship clerks and checkers.

It is clear, however, that the Employers have since recognized the several ILWU locals, named above, as bargaining representatives of these employees in the respective regional areas, and have executed contracts with them on a regional basis. The principal controversy, apparently not yet resolved, has been over the ILWU's attempts to bargain on behalf of these employees on a coastwise basis, as in the case of longshoremen, and the Employers' insistence upon bargaining on a regional or area basis.

As has been pointed out elsewhere, the Coast Longshore Agreement has traditionally established the pattern for collective bargaining regarding clerks and checkers. Separate coast negotiating committees have been established in the past to bargaining on behalf of these latter employees, but these committees function generally under the ILWU's Coast Longshore Negotiating Committee, which in practice conducts the principal negotiations. After settlement of the 1948 strike, a master agreement was executed, on behalf of clerks and checkers in all ports, between the ILWU, acting on behalf of the individual locals, and the WEA, on behalf of the WEAC and the WEOC, with individual port supplements between the regional associations and the ILWU locals involved. It is apparent, however, that throughout the negotiations culminating in these agreements, the parties have attempted to preserve their respective positions.

Thus, the Employers, while generally acquiescing in negotiations with the ILWU Ship Clerks Committee covering all regions, culminating in a master clerks' agreement, have insisted on port supplements for each of the regional areas. The ILWU, though acceding to this arrangement, has persevered in its attempt to persuade the Employers to bargain with respect to clerks and checkers on a coastwise basis.

In view of the foregoing, and upon the entire record, the undersigned concludes and finds that the several units of clerks and checkers, as alleged in the complaint, are appropriate for the purposes of collective bargaining, and that these units will assure to these employees the fullest freedom in exercising the rights guaranteed by the Act. The undersigned further finds, in view of the implicit admission in the Respondents' answer, the evidence of continuous contractual relations between the respective parties; the participation by these employees in the strike of September 2, 1948; and the entire record that, since on or about the respective dates mentioned above, the several named ILWU locals have been the exclusive representatives of the employees in the respective units of ship clerks and checkers, described above, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment within the meaning of Section 9 (a) of the Act.⁷⁶

⁷⁶It should be noted that, in its Decision and Direction of Election, dated September 28, 1946.

c. The refusal to bargain

The complaint alleges that throughout the negotiations, beginning about April 13, 1948, between the ILWU, and its affiliated locals, on one hand, and the WEA, the WEAC, and the WEOC, on the other, the Respondents demanded and insisted that the Employers agree to and execute collective bargaining agreements containing hiring hall provisions, which, by their express terms, or in practical operation, required them to discriminate with regard to the hire and tenure of employment of employees, in violation of the Act. The complaint, as amended, further alleges that, because of the refusal of the Employers to accede to these demands, and in order to compel them to yield thereto, the

(prior to the amendment of the Act), the Board included supervisors and supercargoes within the unit. During negotiations, the Employers insisted that these employees be excluded from the unit on the ground that they were supervisors within the meaning of the amended Act. The ILWU was equally insistent that they be included. Since the parties, by collective bargaining, have included these categories of employees in the current contracts, and, since the amended Act does not prevent employers from recognizing and bargaining with employees who may fall within the definition of supervisors, the undersigned does not intend by the findings herein to disturb the unit established by mutual consent of the parties. In the port supplement, covering the Oregon-Columbia River area, these employees are defined as follows:

(a) Checkers: A checker is an employee who receives, delivers, checks, spots, or weighs cargo to or from marine terminals, including

Respondents, on and after September 2, 1948, authorized and engaged in a strike or concerted refusal to perform services for the members of the Associations. As further amended, the complaint alleges that, on or about December 1, 1948, in order to terminate the strike, the Employers yielded to the Respondents' demands, and on December 17, 1948, and thereafter, executed contracts containing the terms and provisions upon which the Respondents had been insisting. It is contended that, by the foregoing conduct, the Respondents have refused to bargain with the Employers in violation of Section 8 (b) (3) of the Act.

The General Counsel's position is presumably based upon the conclusion that, from on or about April 13, 1948, until the contracts were finally

piers, wharves or ships. (Basic agreement, Section 2 (a).)

(b) Supervisor: A supervisor is an employee who is assigned regularly to the direction or supervision of the work of other checkers, but who may be assigned to the work covered by this agreement, as incidental to his other duties.

(c) Supercargoes: A supercargo is an employee who supervises the loading and/or discharging operations of a vessel. A supercargo is the direct representative of the employer and in conjunction with other representatives of the employer, is responsible for the safe, efficient and proper handling of cargo and shall have authority to hire, supervise, place and/or discharge men, and shall perform his duties in accordance with the orders of his employer. A supercargo's duties do not require him to do

executed, the Respondents had demonstrated such intransigence on the hiring hall issues as to preclude the possibility of any agreement.

The obligation imposed by the Act upon labor organizations, as well as employers, to bargain in good faith is defined in Section 8 (d) of the Act. As further explicated by the Board in the NMU case, the mere adoption by a union of a position, however adamant, concerning a hiring hall, or any other issue, does not establish a refusal to bargain in good faith. As the Board there noted, the position taken by the Union on this issue was no more adamant than that of the employer.

The Board has frequently recognized that, as the Act does not require final agreement or the granting of concessions, the parties may reach an impasse which does not reflect on the good faith of the bargaining.

the work of checkers or supervisors except as incidental to his other duties.

(1) **Checker-Supercargo:** A checker-supercargo is an employee who has been so registered by the Labor Relations Committee as qualified to be employed in either the capacity of a checker or as a supercargo.

The port supplement, covering the Los Angeles-Long Beach Harbor area, merely enumerates these categories of employees as follows:

Classifications:

Clerks: Ship; Dock; Car; Coopers; Tally; Spotters; Hatch watchmen.

Supervisors: Floor Runners; Ship Runners; Car Runners; Chief Receiving and Delivery Clerks; Chief Coopers.

Supercargoes

But what the Act does not permit is the insistence, as a condition precedent to entering into a collective bargaining agreement, that the other party to the negotiations agree to a provision or take some action which is unlawful or inconsistent with the basic policy of the Act. Compliance with the Act's requirement of collective bargaining cannot be made dependent upon the acceptance of provisions in the agreement which, by their terms or in their effectuation, are repugnant to the Act's specific language or basic policy.⁷⁷

The record in the instant case, far from establishing the Respondents' intransigence on the hiring hall issues, during the early stages of the negotiations, indicates that the Respondents had offered to forego preference of employment based on union membership, and to substitute, instead, preference based on registration, alone. Their offer to provide for renegotiation, in the event of an adverse legal determination of the provision for union selection of dispatchers, is a further manifestation of willingness to bargain on the hiring hall issues.

On about August 30, 1948, however, after the Employers had substantially acceded to the Union's proposals on the hiring hall, the Respondents shifted their position, presumably, because (although the undersigned regards the reason as immaterial), the employees had undergone a change of

⁷⁷NMU case, 78 N.L.R.B. 971, 981-982.

mind after the issuance of the injunction and the unfair labor practice charge.

At this juncture, the Respondents clearly demonstrated that the Union would execute no agreement which did not include the substantive features of the hiring hall contained in the 1947 contract, or which did not provide, in effect, for continuation of the hiring practices which had prevailed under that contract. This position was manifested, in part, by the fact that, although as Bridges stated, the Union was willing to defer settlement of vacations, arbitration, and other disputed issues, the Union insisted upon resolution of the hiring hall issues as a condition precedent to the execution of any agreement.

The undersigned, therefore, finds that by their insistence upon the continuation of hiring hall provisions and practices now prescribed by the Act as a condition precedent to consummation of any agreement, the Respondents, on and after August 30, 1948, refused to bargain in violation of Section 8 (b) (3) of the Act. It is further found that, by insisting on, threatening to strike, and later striking to secure these hiring hall provisions, including preference of employment based on union membership, as a condition precedent to agreement, and on and after December 1, 1948, compelling the Employers to execute collective bargaining agreements containing the aforesaid provisions, the Respondents have further refused to bargain in violation of Section 8 (b) (3) of the Act.

The Respondents contend, however, that the Em-

ployers' announcement on September 2, that they would not bargain with the Union unless and until it complied with the requirements of Section 9 (h) of the Act, and the later announcement that they would refuse to deal with "irresponsible leadership," in themselves constituted a refusal by the Employers to bargain, and relieve the Respondents of the correlative duty to bargain. The Respondents point out that on two later occasions they requested the Employers to resume negotiations and that said requests were refused or ignored. Since neither of these demands was accompanied by an offer to recede from their position on the hiring hall demands, which have been found to be unlawful, the obstacle to further negotiations remained. While it is true that the Employers' imposition of a new condition at the eleventh hour in the negotiations, casts serious doubt upon their good faith, the Board has held that such circumstances do not absolve a union from responsibility for a refusal to bargain in a case "where the statutory obligation to bargain was breached by [the union's] fixed determination to require as a condition to the conclusion of any agreement, the inclusion of provisions 'which, by their very terms or in their effectuation, are repugnant to the Act's specific language or basic policy.' "78

⁷⁸See *Matter of American Radio Association, et al.*, 82 N. L. R. B., No. 151 where, in a similar situation, it was held that the principle enunciated in the *Matter of Times Publishing Company*, 72 N. L. R. B. 676, apparently relied on by the Respondents here, was no defense to a refusal to bargain by a union.

3. The alleged violation of Section 8 (b) (1) (A)

Except for the evidence offered by the General Counsel as to the case of True Knowledge, and other instances of alleged discrimination occurring prior to the enactment of the statute, while a valid preferential hiring provision was in effect, it is not alleged, or contended, apart from the violation of Section 8 (b) (2) and Section 8 (b) (3), that the Respondents have restrained or coerced employees in the exercise of the rights guaranteed in Section 7, in violation of Section 8 (b) (1) (A). With respect to the instances of discrimination cited, the General Counsel conceded that the evidence was offered solely for the purpose of illustrating the manner in which the hiring hall had been administered in the past. Since, as the Respondents point out, these discriminatory practices were committed at a time when preference of employment based on union membership was permissible under the statute then in effect, and since the unfair labor practices were not specifically alleged in the complaint, or relied on at the hearing for any other purpose, this evidence can afford no basis for a finding of violation of this section of the statute.

With respect to the alleged violation of Section 8 (b) (1) (A), deriving from the other unfair labor practices found, the Board has already held, for reasons stated in its decisions, that such violations do not afford a basis for such finding.⁷⁹ The

⁷⁹See *Matter of National Maritime Union of America*, 78 N. L. R. B. 971, 982-987; *Matter of*

undersigned, will therefore, recommend that these allegations of the complaint be dismissed.

Mention has already been made of the economic factors which the Board is asked to consider in appraising the Respondents' conduct. In addition, the Respondents stress the drastic decline in available longshore work, resulting from the decline in west coast shipping, since early December, 1948, when work was resumed after the settlement of the strike.⁸⁰ This evidence is presumably directed to the economic argument that, since there is not enough available work for registered longshoremen already on the lists, the labor market should not be glutted by permitting more longshoremen to compete for the available jobs. Acute as this problem may be,

American Radio Association, et al., 82 N. L. R. B., No. 151; Matter of National Maritime Union of America, et al., and Committee for Companies and Agents, Atlantic and Gulf Coast, Unlicensed Personnel, 82 N. L. R. B., No. 152.

⁸⁰A statistical summary of the aggregate number of hours worked by all longshoremen, with a weekly break-down, between December 12, 1948, and March 27, 1949, together with the average number of hours worked weekly per longshoreman, designed to substantiate the Respondents' position, was received in evidence. On May 9, 1949, after the hearing had been closed, the parties submitted to the undersigned a stipulation, substituting a revised schedule, correcting certain inaccuracies in the original exhibit, which do not affect the ultimate conclusion. The revised schedule is hereby substituted for original Respondents' Exhibit 36, and marked accordingly.

it is one with which the Board may not be concerned in resolving the issues before it.

This leaves for consideration the Request for Dismissal, joined in by the Employers and the Respondents, and urged upon the undersigned when the hearing was reconvened. The grounds advanced therefor are obviously based on reasons of expediency. It is urged that, inasmuch as the strike has been settled, collective bargaining agreements concluded and industrial peace restored to the waterfront, the Board ought not to intervene and take action which might be disruptive of the harmonious relationships between the Employers and the Union and to the industry generally.⁸¹ Similar contentions

⁸¹By letter dated March 18, 1949, received in evidence, the General Counsel advised the undersigned that he had been visited by representatives of the ILWU and the WEA, who, protesting further proceedings in the cases, requested that "the complaint be dismissed and the charge or charges withdrawn." Submitted with this communication was a letter which had been handed the General Counsel at the conference by the WEA and PASA, signed by their attorneys, the text of which follows:

The shipping industry on the Pacific Coast is now operating under collective bargaining agreements recently negotiated which have so far operated successfully. It would be extremely unfortunate from the standpoint both of the industry and of the public if the present harmonious employer-union relationships were to be upset by an order of the National Labor Relations Board requiring a change in hiring practices. Waterfront Employers Association of the Pacific Coast and the Pacific American Shipowners Association therefore join with the

were advanced by the Respondents in the ARA case,⁸² and disposed of by the Board with the following observation:

Capitulation by the Employers to the Respondents' discriminatory hiring hall plan, instead of lessening the need, shows an impelling necessity for an order designed to remedy the unfair labor practices found, and to prevent their perpetuation. In any event and apart from the alleged contract asserted by the Respondents, we are convinced that the policies of the Act can best be effectuated by an order requiring the Respondents to take the remedial and affirmative action hereinafter set forth.

It need hardly be added that the Act permits no immunity because of a belief that "exigencies of the moment require infraction of the statute."⁸³

International Longshoremen's and Warehousemen's Union and the National Union of Marine Cooks and Stewards in asking that the proceedings against those two unions now pending before the Board be dismissed.

Continuing, the General Counsel's letter stated that, having regarded the communication in the nature of a motion to dismiss, he had advised the parties that the matter rested with the Trial Examiner, and ultimately, with the Board, and was, therefore, submitting the letter to the undersigned. He noted, however, that he not only declined to join in the request, but specifically opposed it.

⁸²Matter of American Radio Association, et al., *supra*.

⁸³See. N. L. R. B. v. Star Publishing Co., 97 F. 2d 465, 470.

Administrative agencies, as well as the courts, cannot permit their determinations to be influenced by tacit threats of strikes or other forms of reprisal, or by considerations of expediency in executing the laws they have been appointed to administer. Any other course would lead to anarchy and chaos. As Judge Jerome Frank observed in the NMU case:

... respondents, who deem the statute harmful, must pursue the constitutional, democratic, process of either persuading the present Congress or electing new Senators and Congressmen who agree with them. In a democracy, "men should not think it slavery to live according to the rule of the Constitution; for it is their salvation."⁸⁴

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondents set forth in Section III, above, occurring in connection with the business operations of the companies, set forth in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and between the several States and foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

⁸⁴N. L. R. B. v. National Maritime Union of America, CIO, et al., 175 F. 2d 686 (C. A. 2), enf'g 78 N. L. R. B. 971.

V. The remedy

It has been found that, by insisting upon and striking to compel the Employers to yield to their demands for the hiring hall provisions, the Respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (2). The execution of contracts containing these provisions, which intrinsically, or in their practical application, discriminate against employees on the basis of union membership, is equally violative of this section. It will, therefore, be recommended that the Respondents be required to cease giving effect to those provisions of the contracts, or to any extension, renewal, modification, or supplements thereto, or to any superseding contracts, which, by their terms or in their performance, require the Employers to discriminate in regard to the hire or tenure of employment or any term or condition of employment of employees who are not members of ILWU, except in accordance with the proviso in Section 8 (a) (3) of the Act. Inasmuch as the strike has been found to be one of the means by which the Respondents have obtained such contracts, and since there appears likelihood that such methods may be resorted to in the future to perpetuate such provisions, practices, or procedures, it will further be recommended that the Respondents be enjoined from engaging in strike action for such purposes in the future.

It has further been found that the Respondents have refused to bargain in violation of Section 8 (b) (3). It will, therefore, be recommended that

the Respondents bargain collectively with the Employers, upon request, so long as they are the exclusive representatives of the employees in the various units found to be appropriate, subject to the provisions of Section 9 (a) of the Act.⁸⁵

Since it has been found that the Respondents have not engaged in unfair labor practices within the meaning of Section (8) (b) (1), it will be recommended that those allegations of the complaint be dismissed.

Conclusions of Law

1. International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations; International Longshoremen's and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local 1-63, Supercargoes and Checkers Union Local 40, each affiliated with International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, are each labor organizations within the meaning of Section 2 (5) of the Act.

2. All longshoremen and persons engaged in the performance of longshore work, as defined elsewhere herein, employed by members of the WEA on the Pacific Coast, except as hereinabove noted, constitute, and at all times material herein, have con-

⁸⁵See Matter of National Maritime Union of America, CIO, 78 N. L. R. B. 971, 987-988.

stituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, was on June 6, 1947, and has been, at all times material since, the exclusive representative of all longshoremen employed by members of the WEA, with the exceptions noted, in a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. Ship clerks and checkers, as hereinabove defined, employed by members of Waterfront Employers Association of California, and Waterfront Employers of Oregon and Columbia River, respectively, in the port areas of San Francisco Bay, Los Angeles-Long Beach Harbor, and Oregon-Columbia River, with the exceptions noted, constitute, and at all times material herein, have constituted separate appropriate units for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. International Longshoremen's and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local 1-63, and Super-cargoes and Checkers Union Local 40, and each of said Locals, were, on or about the respective dates hereinabove mentioned, and have been, at all times material since, the exclusive representatives of ship clerks and checkers, as defined herein, employed by

members of Waterfront Employers Association of California, and Waterfront Employers of Oregon and Columbia River, respectively, in the several port areas of San Francisco Bay, Los Angeles-Long Beach Harbor, and Oregon-Columbia River, with the exceptions noted herein, in the separate appropriate units, hereinabove described, for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

6. By attempting to cause, and causing, the Employers to discriminate against employees in violation of Section 8 (a) (3) of the Act, the named Respondents, and each of them, have engaged and are engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

7. By refusing on or about August 30, 1948, and at all times thereafter, to bargain collectively with the Employers as the exclusive representative of the employees in the various appropriate units above described, the Respondents, and each of them, have engaged in, and are engaging in unfair labor practices within the meaning of Section 8 (b) (3) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

9. The Respondents, and each of them, have not engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, and, upon the entire record in the case, the undersigned recommends the following:

1. International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, its officers, representatives, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Giving effect to those provisions of the collective bargaining contract, or to any extension, renewal, modification, or supplements thereto, or to any superseding contracts, between the said ILWU and the Waterfront Employers Association of the Pacific Coast, on behalf of itself, Waterfront Employers Association of California, and Waterfront Employers of Oregon and Columbia River, and their respective members, dated December 6, 1948, which expressly, or in their performance require membership in International Longshoremen's and Warehousemen's Union as a condition of employment, or which prevent the Employers from securing or retaining employees on a non-discriminatory basis, except in accordance with the proviso to Section 8 (a) (3) of the Act;

(2) Refusing to bargain collectively with the Employers of the employees in the unit of longshoremen found to be appropriate herein, so long as it is the exclusive representative of said employees.

subject to the provisions of Section 9 (a) of the Act;

(3) Requiring, instructing, or inducing its representatives to insist upon the inclusion in any agreements reached with the Employers of provisions which expressly, or in their performance, require membership in the ILWU as a condition of employment, or prevent the Employers from securing or retaining employees upon a non-discriminatory basis, except in accordance with the proviso in Section 8 (a) (3) of the Act;

(4) Directing, instigating, or encouraging employees to engage in a strike, or approving or ratifying strike action taken by employees, for the purpose of requiring that the Employers execute or acquiesce in the demands of the Union for the performance of contracts, or provisions therein, which expressly, or in their performance require membership in ILWU as a condition of employment, or which would prevent the Employers from securing or retaining employees on a non-discriminatory basis, except in accordance with the provisions of Section 8 (a) (3);

(5) Causing or attempting to cause the Employers to discriminate in any manner against employees, in violation of Section 8 (a) (3).

(b) Take the following affirmative action which the undersigned finds will effecuate the policies of the Act:

(1) Upon request, bargain collectively with the

Employers of the employees in the unit found to be appropriate, so long as it is the exclusive representative of these employees;

(2) Notify applicants for employment as long-shoremen that it will not demand or insist upon the performance or observance in any contract between the Employers and the ILWU of provisions which expressly, or in their performance, require membership in the ILWU as a condition of employment, or which would prevent the Employers from securing or retaining employees on a non-discriminatory basis, except in accordance with the provisions of Section 8 (a) (3) of the Act;

(3) Post immediately in conspicuous places at the meeting halls, hiring halls, and offices of the ILWU, and all other places where notices to members are customarily posted, copies of the form of notice attached hereto and marked Appendix B. Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being signed by a duly authorized officer of the ILWU, be posted and maintained for a period of sixty (60) consecutive days;

(4) Furnish the Regional Director for the Twentieth Region signed copies of the form of notice, attached hereto as Appendix B, for posting, with the consent of the Employers, on bulletin boards at their offices and the hiring halls, and all other places where notices to employees are customarily posted by said Employers. The notice shall be posted on the bulletin boards of the Employers

and maintained thereon for a period of sixty (60) consecutive days thereafter. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being signed as provided in paragraph 1 (b) (3) hereof, be forthwith returned to the Regional Director for said posting;

(5) Notify the Regional Director for the Twentieth Region in writing, within twenty (20) days from the date of this Intermediate Report and Recommended Order, what steps the ILWU has taken to comply therewith.

2. International Longshoremen's and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local 1-63, and Supercargoes and Checkers Union Local 40, each affiliated with the International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, their respective officers, representatives, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Giving effect to those provisions of the several collective bargaining contracts, or to any extensions, renewals, modifications, or supplements thereto, or to any superseding contracts, between the said ILWU, on behalf of its affiliated locals named herein, and between the said locals, and the Waterfront Employers Association of the Pacific Coast, on behalf of itself, the Waterfront Employers

Association of California, and Waterfront Employers of Oregon and Columbia River, dated January 17, 1949, and the port supplements, dated March 11, 1949, and March 25, 1949, respectively, which expressly, or in their performance, require membership in the ILWU or its affiliated locals as a condition of employment, or which prevent the Employers from securing or retaining employees on a non-discriminatory basis, except in accordance with the proviso in Section 8 (a) (3) of the Act;

(2) Refusing to bargain collectively with the Employers of the employees in the several units of ship clerks and checkers found to be appropriate herein, so long as the respective Unions are the exclusive representatives of said employees, subject to the provisions of Section 9 (a) of the Act;

(3) Requiring, instructing, or inducing their respective representatives to insist upon the inclusion in any agreement reached with the respective Employers of any provisions which expressly, or in their performance, require membership in the respective Unions as a condition of employment, or prevent the Employers from securing or retaining employees, upon a non-discriminatory basis, except in accordance with the proviso in Section 8 (a) (3) of the Act;

(4) Directing, instigating, or encouraging employees to engage in a strike, or approving or ratifying strike action taken by employees, for the purpose of requiring that the Employers execute or acquiesce in the demands of the said Unions for

the performance of contracts, or provisions therein, which expressly, or in their performance, require membership in the said Unions as a condition of employment, or which would prevent the Employers from securing or retaining employees on a non-discriminatory basis, except in accordance with the provisions of Section 8 (a) (3) ;

(5) Causing or attempting to cause the Employers to discriminate in any manner against employees, in violation of Section 8 (a) (3).

(b) Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(1) Upon request, bargain collectively with the Employers of the employees in the several units of ship clerks and checkers herein found to be appropriate, so long as the said Unions are the exclusive representatives of said employees ;

(2) Notify applicants for employment as ship clerks and checkers that they will not demand or insist upon the performance or observance in any contract between the Employers and the said Unions of provisions which expressly, or in their performance, require membership in said Unions as a condition of employment, or which would prevent the Employers from securing or retaining employees on a non-discriminatory basis, except in accordance with the provisions of Section 8 (a) (3) of the Act ;

(3) Post immediately in conspicuous places at the meeting halls, hiring halls, and offices of each

of the said Unions, and all other places where notices to members are customarily posted, copies of the form of notice attached hereto and marked Appendix B. Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being signed by the respective duly authorized officers of said Unions, be posted and maintained for a period of sixty (60) consecutive days;

(4) Furnish the Regional Director for the Twentieth Region signed copies of the form of notice, attached hereto as Appendix B, for posting, with the consent of the Employers, on bulletin boards at their offices and the hiring halls, and all other places where notices to employees are customarily posted by said Employers. The notice shall be posted on the bulletin boards of the Employers and maintained thereon for a period of sixty (60) consecutive days thereafter. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being signed as provided in paragraph 2 (b) (3) hereof, be forthwith returned to the Regional Director for said posting;

(5) Notify the Regional Director for the Twentieth Region in writing, within twenty (20) days from the date of this Intermediate Report and Recommended Order, what steps the said Unions have taken to comply therewith.

It Is Further Recommended that the complaint, as amended, be dismissed with respect to the allegations that the Respondents or any of them have

restrained and coerced employees in violation of Section 8 (b) (1) (A) of the Act.

It Is Further Recommended that unless on or before twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order, the Respondents notify the said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the said Respondents to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or

mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 30th day of November, 1949.

/s/ IRVING ROGOSIN,
Trial Examiner.

APPENDIX A

Name and Address of Company	Membership List		WEOC	WEAC	
	WEA	WEW		Northern Calif.	Southern Calif.
Alaska Steamship Company Pier 42 Seattle, Washington	x	x			
Alaska Terminal & Stevedoring Co. Pier 42 Seattle, Washington	x	x			
Alaska Transportation Company Pier 58 Seattle, Washington	x	x			
Albina Dock Company 211 Board of Trade Bldg. Portland, Oregon	x	x	x		
American-Hawaiian SS Co. 215 Market Street San Francisco, California	x	x	x	x	x
American Mail Line, Ltd. 522 Pacific Bldg. Portland, Oregon	x	x	x		
American Pacific Steamship Co. 541 South Spring Street Los Angeles 13, California	x			x	x
American President Lines, Ltd. 311 California Street San Francisco, California	x			x	x
American Stevedore Company Pier #92 San Francisco, California	x			x	
Ames Terminal Company 3200-26th S.W. Seattle, Washington	x	x			
Anglo-Canadian Shipping Co. 1714 Arctic Bldg. Seattle, Washington	x	x	x		
Arlington Dock Company Pier 56 Seattle, Washington	x	x			
Arrow Stevedore Co. 310 Sansome Street San Francisco, California				x	

Name and Address of Company	Membership List		WEOC	WEAC	
	WEA	WEW		Northern Calif.	Southern Calif.
Associated Banning Company 112 Market Street San Francisco, California	x			x	x
A/S Thor Dahl (Pac. Is. Transport Line) (By General SS Corp. Let.) 465 California Street San Francisco, California	x			x	x
Bank Line P.O. Box 257 Long Beach, California					x
Barber Steamship Lines, Inc. (Sudden & Christenson Overseas Corp.) 310 Sansome Street San Francisco, California	x				x
Blue Star Line, Inc. 1801 Northern Life Tower Seattle, Washington	x	x		x	x
Brady-Hamilton Stevedoring Co. Board of Trade Bldg. Portland, Oregon	x	x	x		
Burchard & Fiskien Exchange Bldg. Seattle, Washington		x	x		
Burns Steamship Company 624 North LaBrea Avenue Los Angeles 36, California	x	x	x		x
Calif. Steve. & Ballast Co. 311 California Street San Francisco, California	x			x	
Canadian Transport Co. Ltd. 208 Columbia Street Seattle, Washington	x	x			
W. R. Chamberlin & Co. 465 California Street San Francisco, California	x		x	x	x
City Dock Company Pier 58 Seattle, Washington		x			
Coastwise Line (Coastwise Pacific Line) 150 Sansome Street San Francisco, California	x	x	x	x	x

Name and Address of Company	Membership List		WEOC	WEAC	
	WEA	WEW		Northern Calif.	Southern Calif.
Columbia Basin Terminals 1788 N.W. Front Avenue Portland, Oregon	x		x		
Columbia River Steve. Co. P.O. Box 1066 St. Helens, Oregon	x		x		
Compania Naviera Independencia, S.A. (Independence Line) (By General SS Corp. Ltd.) 465 California Street San Francisco, California	x	x	x	x	x
Crescent Wharf & Warehouse Co. P.O. Box 276 Terminal Island, California	x				x
Consolidated Steamship Cos. 64 Pine Street San Francisco, California	x			x	
De La Rama SS Co., Inc. 230 California Street San Francisco, California	x			x	x
Deming, Roberg & Williams, Inc. 1212 Cornwall Bellingham, Washington	x	x			
Ditlev-Simonsen (Pacific Orient Express Line) (By General SS Corp. Ltd.) Stuart Bldg. Seattle, Washington	x	x	x	x	x
Dodwell & Co. Ltd. Colman Bldg. Seattle, Washington	x	x			x
Donaldson Line, Ltd. (Balfour, Guthrie & Co. Agts.) 351 California Street San Francisco, California	x	x	x	x	x
East Asiatic Company, Ltd. 465 California Street San Francisco, California	x				x
El Dorado Terminal Company 311 California Street San Francisco, California	x			x	

Name and Address of Company	Membership List		WEOC	WEAC	
	WEA	WEW		Northern Calif.	Southern Calif.
Encinal Terminals Foot of Jay Street Alameda, California				x	
Eureka Stevedoring Company Box 372 Eureka, California	x			x	
Everett Stevedoring Corp. Pier #1 Everett, Washington	x	x			
Far East Steamship Co. Inc. 208 Columbia Seattle, Washington		x			
Fay Agencies 445 Jones Street Ventura, California	x				x
Frank J. Foran, Inc. 230 California Street San Francisco, California	x			x	
Fred Olsen Line, Ltd. 241 California Street San Francisco 11, California	x	x	x	x	x
French Line Suite 608, 310 Sansome Street Alaska Commercial Building San Francisco, California	x	x	x	x	x
Fruit Express Line 465 California Street San Francisco, California	x	x	x	x	x
Funch, Edye & Co. Inc. 260 California Street San Francisco 11, California	x			x	x
Furness, Withy & Co., Ltd. 239 California Street San Francisco, California	x	x	x	x	x
General Steamship Corp. Ltd. 465 California Street San Francisco, California	x	x	x	x	x
General Steve. & Ballast Co. 224 Spear St. San Francisco, California	x			x	
Girdwood Shipping Co. Northern Life Tower Seattle, Washington	x	x	x		

Name and Address of Company	Membership List		WEAC	WEAC	
	WEA	WEW	WEAC	Northern Calif.	Southern Calif.
Golden Gate Terminals 190 Lombard Street San Francisco, California				X	
Grace Line, Inc. (W. R. Grace & Co. Agts.) #2 Pine Street San Francisco, California	X	X	X	X	X
Griffiths Transport Co. 709 Dekum Bldg. Portland, Oregon			X		
Holland America Line 233 California St. San Francisco, California	X			X	X
Howard Terminals 1st & Market Sts. Oakland, California				X	
Humboldt Stevedore Co., Ltd. P.O. Box 1003 Eureka, California	X				
Independent Stevedore Co. Coos Bay, Oregon	X		X		
Indies Terminal Company Berth 230-B Terminal Island, California					X
International Shipping Co. Arctic Bldg Seattle, Washington		X			
International Terminals, Inc. 215 West 6th Street Los Angeles, California					X
Interocean Line 311 California Street San Francisco, California	X			X	X
Interocean Steamship Corp. (Agents for Interocean Line) Dexter Horton Bldg. Seattle, Washington		X	X		
Interstate Terminals 1118 N.W. Front Portland, Oregon	X		X		
Isthmian Steamship Co. 215 Market Street San Francisco, California	X	X	X	X	X

Name and Address of Company	Membership List		WEOC	WEAC	
	WEA	WEW		Northern Calif.	Southern Calif.
James Griffiths & Sons, Inc. Empire Bldg. Seattle, Washington	x	x	x	x	x
Johnson Line #2 Pine Street San Francisco, California	x	x	x	x	x
W. J. Jones & Son, Inc. Board of Trade Bldg. Portland, Oregon	x		x		
Jones Stevedoring Company 311 California Street San Francisco, California	x			x	
Kerr Steamship Co. Inc. (Silver Line) 350 California Street San Francisco, California	x	x	x	x	x
Klaveness Line (Sudden & Christenson Overseas Corp. Agts.) 310 Sansome Street San Francisco, California	x	x			x
Knutsen Line (Knut Knutsen, O.A.S.) 311 California Street San Francisco, California	x	x			x
J. Lauritzen Line 1001 Northern Life Tower Seattle, Washington	x	x	x		
Leslie Salt Company Pier 11-B Lenora St. Dock Seattle, Washington	x	x			
Lidell & Clarke, Inc. 211-12-13 Board of Trade Bldg. Portland, Oregon	x		x		
Linnton Terminals 317 Board of Trade Bldg. Portland 4, Oregon	x		x		
Long Beach Terminals Co. 1441 El Embarcadero Long Beach, California	x				x
Longview Stevedore Co. Mill Site Longview, Washington	x		x		

Name and Address of Company	Membership List		WEOC	WEAC	
	WEA	WEW		Northern Calif.	Southern Calif.
Luckenbach SS Company, Inc. (Luckenbach Gulf SS Co.) 100 Bush Street San Francisco, California	x	x	x	x	x
H. E. Mansfield, Inc. 402 Commercial Ave. Anacortes, Washington	x	x			
Marine Agencies, Ltd. 548 South Spring St. Los Angeles, California					x
Marine Terminals Corporation 24 California Street San Francisco, California	x			x	
Marine Terminals Corp. of L.A. Box 365 Wilmington, California	x				x
Matson Terminals Inc. Pier 44 Seattle, Washington		x			
Matson Navigation Co. 215 Market Street San Francisco, California	x	x	x	x	x
John E. Marshall, Inc. P.O. Box 257 Long Beach 2, California					x
Metropolitan Stevedore Company 139 Avalon Blvd. Wilmington, California	x				x
Mission Terminal Company c/o Pac. Steve. & Bal. Co. Transport Bldg. San Francisco 5, California	x			x	
Mitchell Stevedoring Co. Pier 18 San Francisco, California	x			x	
J. J. Moore & Co., Inc. Empire Bldg. Seattle, Washington		x			
Norpac Shipping Co. Lewis Bldg. Portland, Oregon			x		

Name and Address of Company	Membership List		WEOC	WEAC	
	WEA	WEW		Northern Calif.	Southern Calif.
North Pacific Coast Line (Royal Mail Lines Ltd.) (Holland America Line) Lewis Bldg. Portland, Oregon			x		
Northern Stevedores, Inc. Colman Bldg. Seattle, Washington	x	x			
Northland Transportation Co. Pier #56 Seattle, Washington	x	x			
Norton Lilly & Company 230 California Street San Francisco, California	x	x	x	x	x
Oceanic Steamship Company Room 312, Roosevelt Bldg. Los Angeles, California					x
Occidental Forwarding Co. 215 Market St. Room 529 San Francisco, California				x	
Ocean Terminals Pier #41 San Francisco, California	x			x	x
Oliver J. Olson & Co. 260 California Street San Francisco, California	x	x	x	x	x
Olympia Stevedoring Co. P.O. Box 192 Olympia, Washington	x	x			
Olympic Peninsula Steve. Co. Northern Life Tower Seattle, Washington	x	x			
Olympic Steamship Co., Inc. 64 Pine Street San Francisco, California	x	x		x	x
Oregon Stevedoring Co. 1020 N.W. Front Ave. Portland, Oregon	x		x		
Outer Harbor Dock & Wharf Co. Berth #53 San Pedro, California					x
Outport Stevedores Inc. P.O. Box 386 North Bend, Oregon	x		x		

Name and Address of Company	Membership List		WEOC	WEAC	
	WEA	WEW		Northern Calif.	Southern Calif.
Pacific Atlantic SS Company (Quaker Line) P.O. Box 250 Vancouver, Washington	x	x		x	x
Pacific Argentine Brazil Line 618 N.W. Front Avenue Portland, Oregon			x		
Pacific Far East Line, Inc. 141 Battery St. San Francisco, California	x			x	x
Pacific Oriental Terminal Co. Pier 23 San Francisco, California				x	
Pacific Mail Steamship Co. 311 California Street San Francisco, California	x			x	
Pacific Ports Service Corp. (Norton, Lilly & Co.) 230 California Street San Francisco, California	x		x	x	x
Pacific Republic Line (Moore-McCormack Lines Inc.) 140 California Street San Francisco, California	x	x	x	x	x
Pacific Transport Lines, Inc. 244 California Street San Francisco, California	x			x	
Pacific Stevedoring & Ballast Co. Transport Bldg. San Francisco 5, California	x			x	
Pacific World Shipping Company 3630 N.W. Front Portland, Oregon			x		
Panama Pacific Line 141 Battery St., 6th Floor San Francisco 11, California	x			x	x
Parr Richmond Terminal Corp. No. 1 Drumm Street San Francisco, California				x	
Pope & Talbot Lines (Pope & Talbot, Inc.) 320 California Street San Francisco, California	x	x	x	x	x

Name and Address of Company	Membership List		WEOC	WEAC	
	WEA	WEW		Northern Calif.	Southern Calif.
Portland Stevedoring Company 1730 N.W. Quimby Portland, Oregon	x		x		
Port of Los Angeles Stevedoring & Ballast Co. 322 East 22nd Street San Pedro, California					x
Prince Line, Ltd. (Furness, Withy & Co. Ltd. Agts.) 239 California Street San Francisco 11, California	x			x	x
Puget Sound Stevedoring Co. Bell St. Terminal Seattle, Washington	x	x			
J. Ramselius Room 308, 16 California St. San Francisco, California	x			x	x
Rothschild-International Stevedoring Company Northern Life Tower Seattle, Washington	x	x			
Royal Mail Lines, Ltd. (Holland America Line) 825 Central Bldg. Los Angeles, California	x	x	x		x
Salen Line (Interocean SS Corp. Agts.) 311 California Street San Francisco, California	x			x	x
San Francisco Steve. Co. 35 Brannan St. San Francisco, California	x			x	
Santa Ana Steamship Company 519 Colman Building Seattle, Washington	x	x			
Schafer Bros. SS Lines 1 Drumm Street San Francisco, California	x		x	x	x
Schirmer Stevedoring Co. Ltd. 55 Sacramento Street San Francisco, California	x			x	
Seaboard Stevedoring Corp. Pier 48 A San Francisco, California				x	x

Name and Address of Company	Membership List		WEOC	WEAC	
	WEA	WEW		Northern Calif.	Southern Calif.
Seaboard Steve. Corp. of Wash. (Norton, Lilly & Co.) 1017 Board of Trade Bldg Portland, Oregon			x		
Seattle Marine Handling Co. Pier 56 Seattle 1, Washington		x			
Shaffer Terminals, Inc. P.O. Box 1157 Tacoma, Washington		x			
C. F. Sharp & Co., Inc. Central Tower 703 Market Street San Francisco, California	x	x		x	
Shepard Steamship Company 369 Pine Street San Francisco, California	x	x	x	x	x
Southern Terminals Co. Pier A Long Beach, California	x				x
States Steamship Company P.O. Box 250 Vancouver, Washington	x		x		x
State Terminal Co., Ltd. Marvin Bldg., 24 California St. San Francisco, California				x	
Sudden & Christenson, Inc. (Arrow Line) 310 Sansome Street San Francisco, California	x	x	x	x	x
Tait Stevedoring Co. Arctic Bldg. Seattle, Washington	x	x			
Terminal Operators, Inc. 311 California Street San Francisco, California				x	
Transatlantic Steamship Co. Ltd. (Gen. SS Corp. Ltd., Agts.) 465 California Street San Francisco, California	x	x			x
Transmarine Navigation Corp. 215 West 6th Los Angeles, California				x	x

Name and Address of Company	Membership List		WEOC	WEAC	
	WEA	WEW		Northern Calif.	Southern Calif.
Transpacific Transportation Co. (Java Pacific Line) 351 California Street, 8th Floor San Francisco, California	x	x	x	x	x
Twin Harbor Stevedoring Co. Eighth Street Hoquiam, Washington	x	x			
Union Steamship Co. of N.Z. 230 California Street San Francisco, California				x	
Steamers Service Company 1050-4th Avenue So. Seattle, Washington		x			
Union Sulphur Co., Inc. 816 Smith Tower Seattle, Washington	x	x	x	x	x
United Fruit Company 1001 Fourth St. San Francisco, California	x	x		x	x
United Greek Shipowners Assn. (Pacific Mediterranean Line) (Gen. Steamship Corp. Ltd.) Stuart Bldg. Seattle, Washington	x	x	x	x	x
United Stevedoring Company 1 Drumm Street San Francisco 11, California	x			x	
Viking Steamship Company 311 California Street San Francisco, California	x				
Virginia Dock & Trading Co. Pier 63 Seattle, Washington		x			
Washington Stevedoring Co. Alaska Bldg. Seattle, Washington	x	x			
Frank Waterhouse & Co. of Canada Ltd. Colman Bldg. Seattle, Washington	x	x			
West Coast Terminals, Inc. 465 California Street, Room 1115 San Francisco, California	x		x	x	x

Name and Address of Company	Membership List		WEOC	WEAC	
	WEA	WEW		Northern Calif.	Southern Calif.
West Coast Trans-Oceanic Steamship Line 510 S.W. Third Avenue Portland 4, Oregon	x		x		
West Oregon Terminals 817 Board of Trade Bldg. Portland 4, Oregon	x		x		
Western Stevedore Company 96 Columbia St. Seattle, Washington	x	x			
Western Terminal Co. 341 Embarcadero San Francisco, California				x	
Westfal-Larson Company Line 465 California Street San Francisco, California	x	x			x
Weyerhaeuser Steamship Co. 311 California Street San Francisco, California	x	x	x	x	x
Willapa Harbor Stevedoring 119 W. Ellis St. Raymond, Washington	x	x			
Williams, Dimond & Co. 262 California Street San Francisco, California	x	x	x	x	x
Yerba Buena Corporation 311 California St. 406 Robert Dollar Bldg. San Francisco 4, California	x			x	

APPENDIX B

Notice to All Officers, Representatives, Agents, and Members of International Longshoremen's and Warehousemen's Union, International Longshoremen's and Warehousemen's Union, District No. 1; Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local 1-63, and Supercargoes and Checkers Union, Local 40, Each Affiliated With International Longshoremen's and Warehousemen's Union, Affiliated With the Congress of Industrial Organizations

Pursuant to the Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not give effect to those provisions of the collective bargaining contract, or to any extension, renewal, modification, or supplement thereto, or to any superseding contract, between the ILWU and Waterfront Employers Association of the Pacific Coast, on behalf of itself, and the other regional Associations, the said regional Associations, and their respective members, dated December 6, 1948, covering the appropriate unit of longshoreman; the collective bargaining contract, between the ILWU, acting on behalf of the above-named locals, and Waterfront Employers of the Pacific Coast, on behalf of Waterfront Employers Associa-

tion of California, and Waterfront Employers of Oregon and Columbia River, dated January 17, 1949, and the port supplements, dated March 11, 1949, and March 25, 1949, respectively, covering ship clerks and checkers in the respective port areas, which expressly, or in their performance, require membership in the said Unions or any of them, or prevent the Employers from securing or retaining employees on a non-discriminatory basis, except in accordance with the proviso to Section 8 (a) (3) of the Act.

We Will Not refuse to bargain collectively as the exclusive bargaining representative of the unit of longshoremen, and the separate units of ship clerks and checkers, found to be appropriate in the Intermediate Report and Recommended Order in Cases Nos. 20-CB-19, 20-CB-38, with the Waterfront Employers Association of the Pacific Coast, on behalf of itself, Waterfront Employers Association of California, and Waterfront Employers of Oregon and Columbia River, respectively, on behalf of the Employers as shown on Appendix A, attached thereto, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

We will not require, instruct, or induce our representatives or agents to require or insist upon the inclusion in any agreement between us and the Employers of any provisions which expressly, or in their performance, require membership in said Union as a condition of employment, or prevent the Employers from securing or retaining employees upon a non-discriminatory basis, except in accord-

ance with the proviso in Section 8 (a) (3) of the Act.

We Will Not direct, instigate, encourage, approve or ratify strike action taken by employees for the purpose of requiring that the Employers execute, or acquiesce in the demands of the Union for the performance of contracts, or provisions therein, which expressly, or in their performance, require membership in the Union as a condition of employment, or which would prevent the Employers from securing or retaining employees on a non-discriminatory basis, except in accordance with the provisions of Section 8 (a) (3).

We Will Not cause or attempt to cause the Employers to discriminate in any manner against employees, in violation of Section 8 (a) (3) of the Act.

Dated

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, C.I.O.

By,
(Representative) (Title)

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, DISTRICT
No. 1

By,
(Representative) (Title)

SHIP CLERKS ASSOCIATION,
LOCAL 34,

By ,
(Representative) (Title)

MARINE CLERKS ASSOCIA-
TION, LOCAL 1-63,

By ,
(Representative) (Title)

SUPERCARGOES AND CHECKERS UNION,
LOCAL 40,

By ,
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Before the National Labor Relations Board
Twentieth Region

Case No. 20-CB-19

In the Matter of:

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, Affiliated
With the CONGRESS OF INDUSTRIAL
ORGANIZATIONS

and

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST

Case No. 20-CB-38

In the Matter of:

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, DISTRICT
No. 1, Acting on Behalf of SHIP CLERKS
ASSOCIATION, LOCAL 34, and LOCAL 34;
MARINE CLERKS ASSOCIATION, LOCAL
1-63, and LOCAL 1-40, Each Affiliated With
INTERNATIONAL LONGSHOREMEN'S
AND WAREHOUSEMEN'S UNION, CIO

and

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST

Wednesday, September 1, 1948

Pursuant to notice, the above-entitled matter
came on for hearing at 10:15 o'clock, a.m.

Before: Irving Rogosin, Esq., Trial Examiner. [1*]

* Page numbering appearing at top of page of original Reporter's
Transcript of Record.

Appearances:

REEVES R. HILTON,
Washington, D. C.;

DAVID E. DAVIS,
San Francisco, California,

Appearing on Behalf of the General
Counsel, National Labor Relations
Board.

BROBECK, PHLEGER & HARRISON, by
SAMUEL L. HOLMES,
111 Sutter Street,
San Francisco, California,

Appearing on Behalf of Waterfront
Employers Association of the Pa-
cific Coast.

GLADSTEIN, ANDERSEN, RESNER &
SAWYER, by
NORMAN LEONARD,

240 Montgomery Street,
San Francisco, California,

International Longshoremen's and
Warehousemen's Union Affiliated
With the Congress of Industrial Or-
ganizations. International Long-
shoremen's and Warehousemen's
Union, District No. 1, Acting on
Behalf of Ship Clerks Association,
Local 34, and Local 34; Marine

Clerks Association, Local 1-63, and Local 1-40, Each Affiliated With International Longshoremen's and Warehousemen's Union, CIO, Respondents. [2]

* * *

PROCEEDINGS

Mr. Hilton: If the Examiner please, as General Counsel Exhibit No. 1, I would like to offer in evidence the Complaint together with copies of amended charges issued on August 20, 1948, against the International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, being Case No. 20-CB-19, and consolidated with International Longshoremen's and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local 1-63, and Local 1-40, each affiliated with the International Longshoremen's and Warehousemen's Union, CIO, being Case No. 20-CB-38. Pursuant to the order of the General Counsel the cases were consolidated, and a complaint issued pursuant thereto.

Also, a copy of the Order consolidating cases and Notice of Hearing setting this matter for hearing today, September 1, 1948, at 10:00 o'clock in the forenoon at Room 634, 821 Market Street. [9]

(Thereupon the documents above referred to were marked General Counsel Exhibit No. 1 for identification.)

Mr. Hilton: As General Counsel Exhibit No. 1-A, Affidavit of Service of Complaint and Order Consolidating cases and Notice of Consolidated Hearing signed by V. Bass, an employee of the Twentieth Region of the National Labor Relations Board, showing service by registered mail, date of mailing on August 20, 1948. Attached to the exhibit are return receipts, United States Post Office registered mail, showing service of the Complaint and Notice of Hearing upon the respondents that I have named.

(Thereupon the document above referred to was marked General Counsel Exhibit No. 1-A for identification.)

Mr. Hilton: I should also at this time like to ask if counsel for the Waterfront Employers Association did receive a copy of the Complaint and Notice of Hearing?

Mr. Holmes: We did.

Mr. Hilton: I will show the exhibit to counsel for respondents.

Mr. Leonard: If I understand correctly, Mr. Hilton, General Counsel proposed Exhibit No. 1 consists of the Complaint which is before me, charges or amended charges that are attached to it, and the Order.

Mr. Hilton: Order of Consolidation and Notice of Hearing.

Mr. Leonard: And 1-A is this Affidavit of Service with [10] the attached receipts. [11]

General Counsel Exhibit No. 1 and 1-A for identification may be received and so marked.

(The documents heretofore marked General Counsel Exhibit No. 1 and 1-A for identification were received in evidence.)

* * *

Trial Examiner Rogosin: Very well, Mr. Leonard.

Mr. Leonard: Section 10 (b) of the Statute provides that [12] no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. In other words, the Board has no jurisdiction to issue a complaint prior to the service of a copy of the charge on the person against whom the charge is made.

The proffered exhibit, or perhaps it has already been offered in evidence, the General Counsel Exhibits No. 1 and 1-A indicate from a very cursory examination of those papers—and this is the first time we have seen the full formal file:

1. That certain charges marked “Additional Charges, Nos. 1, 2 and 3”—they are so marked in the file—were never served upon any of the respondents. There is no affidavit of service that those charges were served. My information is that they never were served.

The only affidavit of service of any charge is the affidavit of service of a document marked

"Amended Charge" served upon one of the respondents, the International Longshoremen's and Warehousemen's Union.

The affidavit of service which is in the file about which I asked Mr. Hilton indicates on its face that it was served August 24, 1948. The complaint indicates on its face it was issued August 20, 1948. Obviously, the amended charge that was served upon the party charged or against whom the [13] charge was made was some four days after the issuance of the complaint.

Going back to Section 10 (b), reading the language of the statute itself, it seems to me that it is perfectly obvious that the Board had no jurisdiction to issue the complaint prior to the time it served the charge upon the respondents International Longshoremen's and Warehousemen's Union. Consequently, the Trial Examiner has not authority to proceed in view of the fact that the complaint was prematurely issued.

As I say, with respect to the balance of the respondents, those named in Case No. 20-CB-38, there is no proof of any service of any charge upon them at any time.

So, for those reasons I make the point that the Complaint was improperly issued, that the service contemplated by Section 10 (b) of the statute was not complied with, there wasn't any such service, and therefore the proceeding falls of its own weight at the very outset because there hasn't been the compliance with the statutory requirement which Congress made a condition precedent to the issu-

ance of a complaint and the hearing which [14] follows.

* * *

The second point we make, in support of our motion to dismiss, is one which, in effect, I have already made; that is, that the first amended charge, upon which the Complaint in Case No. 20-CB-19 is based, was not served upon the Respondents, and particularly upon the Respondent ILWU, prior to the issuance thereof, contrary to the provisions of Section 10(b) of the Act.

Since I have prepared this written motion to dismiss I had an opportunity this morning, for the first time, to examine the formal file and I want to add to that portion of the motion to dismiss an additional matter, and that is to say that the first additional, second additional, third additional charges, which purportedly run against Respondents mentioned in Case No. 20-CB-38, were never served upon those Respondents prior to the issuance of the Complaint, as required by Section 10(b) of the Statute. [19]

* * *

Mr. Hilton: The Affidavit of Service and the Consolidated Complaint, which was served on each of the Respondents, contained a copy of the Amended Charge involving the ILWU, Case No. 20-CB-19, and also attached to the Complaint and Notice of Hearing copies of the charges filed in Case No. 20-CB-38.

Is that correct?

Mr. Leonard: I don't know, to be perfectly

frank with you. On the face of the exhibit there is no proof of service. [24]

* * *

Mr. Hilton: We are proceeding under the amended charge. The fact is that a copy of the original charge was included in the formal papers without my knowledge. It shouldn't be there. [28]

* * *

Mr. Hilton: The Rules and Regulations of the Board provide, and this is Section 203.14:

“Upon the filing of a charge, the Charging Party shall be responsible for the timely and proper service of a copy thereof upon the person against whom such charge is made. The Regional Director will, as a matter of course, cause a copy of such charge to be served upon the person against whom the charge is made, but he shall not be deemed to assume responsibility for such service.”

Now, we have issued a Complaint based upon the amended charge in Case No. 20-CB-18. That charge, which shows it is an amended charge, obviously is predicated upon a first charge having been filed, or an original charge having been filed. So that when we served the Complaint, together with the Notice of Hearing, and a copy of the amended charge, the Board has certainly met all requirements insofar as giving a copy of the amended charge to Respondents is concerned.

With respect to Case No. 20-CB-38, they are charges which were filed on August 20, 1948, relat-

ing to certain classifications of clerks. Now, there again, of course, the provisions of Section 10(b) and the Rules and Regulations of the Board [30] are applicable. Strictly speaking, there is no legal duty on the General Counsel's Office, or on the Regional Director, to serve a copy of those charges upon Respondents.

Now, we served copies of the charges in 20-CB-38 upon each of the Respondents. They were attached to the Complaint and Notice of Hearing, and the Affidavit of Service shows that they were actually served upon each of the Respondents. The charge, of course, is simply jurisdictional.

Again, viewing this from a practical standpoint, the original charge was filed in June of 1948 and certainly there can be no complaint that no investigation was made on those charges, the issuance of the amended charge in Case No. 20-CB-19, as well as the new case in 20-CB-38, all of which related to matters that had been thoroughly and fully investigated over a period of more than two months, and does not in any manner prejudice the rights of these Respondents in this hearing.

Therefore, the Motion to Dismiss on those grounds is wholly without merit. [31]

* * *

Mr. Leonard: I certainly don't want to be unduly difficult about these matters. On the other hand, they are jurisdictional. I have a responsibility to the Respondents to protect their interests. So far as they were notified, at the time they were

served with a copy of the Complaint and the charges herein, the charges that were attached to the Complaint didn't appear that any of their acts set forth in Paragraph VI, which were the basic section of the Complaint, had any effect upon interstate commerce. [67]

* * *

Trial Examiner Rogosin: That may be done. Respondent's Answer may be marked General Counsel's Exhibit 1-D for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1-D for identification.)

Trial Examiner Rogosin: It may be received in evidence.

(The document heretofore marked General Counsel's Exhibit No. 1-D for identification was received in evidence.) [74]

* * *

JAMES A. ROBERTSON

a witness called by and on behalf of the General Counsel, National Labor Relations Board, being first duly sworn, was examined and testified as follows: [81]

Direct Examination

* * *

Q. (By Mr. Hilton): Now, directing your attention to General Counsel's Exhibit No. 48, when was the Waterfront Employers Association incorporated? A. June 22, 1937.

(Testimony of James A. Robertson.)

Q. And under the laws of what State?

A. California.

Q. What kind of a corporation is it? [85]

A. Non-profit corporation.

Q. And does it have officers? A. It has.

Q. Can you tell us who the officers are?

A. President, Mr. F. P. Foisie; Vice President, H. W. Clark; Treasurer, K. F. Saysette; Secretary, J. A. Robertson.

Q. Now, directing your attention to General Counsel's Exhibit No. 48, what are the purposes of the corporation?

A. The corporation is for the administration and negotiation of labor agreements, labor relations.

Q. Do you have any members of this Association? A. We do.

Q. Who is eligible to membership in the corporation?

A. Steamship companies who carry freight, cargo, by water; stevedoring companies who employ longshoremen; terminal companies, and agents of steamship companies. I believe that covers the categories.

Q. Where are these employers located?

A. They operate in and out of Pacific Coast ports.

Q. In what states?

A. Oregon, Washington, and California.

Q. How many members do you have in the cate-

(Testimony of James A. Robertson.)

gories you have named who are members of your organization as of this time? A. 129.

Q. Approximately how long have you had 129 members? [86]

A. I don't think I can answer that question.

Q. Well, the membership you now have, 129 members, could you say approximately how long these members have been in the Association, directing your attention to approximately January of 1948?

A. I don't think there would be any change. There might be differences, but the number might be about the same.

Q. I believe you stated the purpose of the organization was to represent employers for the purposes of collective bargaining?

A. That is correct.

Q. That is the employer members of your Association, is that correct? A. That is right.

Q. Now, what authority, if any, does the Association have to represent these employers?

A. It has full authority.

Q. Well, how is that designated?

A. We follow the policies set down by the Board of Directors. When agreement is reached, it is signed on behalf of the members by the Association.

Q. Do you know how long this Association has been acting as the collective bargaining agent for its employer members?

A. Since it was incorporated.

Q. When was that? [87]

(Testimony of James A. Robertson.)

A. '37, June of '37.

Q. Do you know whether or not it has been continuous since 1937? A. It has.

Q. Can you tell us just how the Waterfront Employers Association handles the negotiations with various labor organizations?

A. Could you clarify that question?

Q. How are the negotiations actually handled by the Waterfront Employers Association? Do you have committees, or how do you operate?

A. The Board of Directors meet and decide upon the policy. The Negotiating Committee is usually appointed, which consists of officers of the corporation, which meet with the union with which we deal, and agreement is attempted.

Q. In the event that this committee comes to an agreement with the committee representing the union, what does the committee do then, representing the employers? Do they report back, or do they sign the agreement, or just what do they do?

A. They sign the agreement.

Trial Examiner Rogosin: The Negotiating Committee or the Board of Directors?

The Witness: No, the Negotiating Committee. Actually it is the officers of the corporation.

Q. (By Mr. Hilton): Do you know with what labor organization the Waterfront Employers Association had been dealing in the [88] past years?

A. The International Longshoremen's and Warehousemen's Union, CIO.

Q. Covering what employees?

(Testimony of James A. Robertson.)

A. Coast longshore, longshoremen.

Q. Directing your attention to Paragraph IV of the Complaint which is in evidence as General Counsel's Exhibit No. 1, I will ask you if that is the group of employees with which the Waterfront Employers Association has been bargaining?

A. That is correct. They are named in the current agreement, as I recall.

Q. Do you have any other employer organization other than the Waterfront Employers Association of the Pacific Coast?

A. There is the Waterfront Employers Association of California, Waterfront Employers of Oregon and Columbia River, Waterfront Employers of Washington. [89]

* * *

Q. What kind of an organization is the Waterfront Employers Association of California?

A. That is an Association of employers of longshoremen, carloaders, ships clerks, and so on.

Q. I mean what type of an organization is it?

A. It's the same type as the Coast Association.

Q. Is it a partnership or a corporation or just what is it?

A. It's a corporation.

Q. It is incorporated under the laws of what state?

A. California.

Q. The exhibit which you now have in your hand as General Counsel Exhibit No. 49 for identification, is that the current constitution and by-laws of the Association?

A. It is.

(Testimony of James A. Robertson.)

Q. Do you know how long the present constitution and by-laws have been in effect?

A. The California Association was incorporated in November, November 1, 1943, and I know of no change to my knowledge.

Mr. Hilton: I would like to offer this in evidence as General Counsel's Exhibit No. 49.

Mr. Leonard: May I ask the witness just one question, please?

Trial Examiner Rogosin: You may.

Mr. Leonard: Mr. Robertson, I think you testified right [90] at the outset that you were Secretary of the Waterfront Employers Association of the Pacific Coast and of the Waterfront Employers Association of California; is that right?

The Witness: That is correct, sir.

Mr. Leonard: So that your testimony concerning this General Counsel's Exhibit 49 for identification is based upon your knowledge as Secretary of the California Association?

The Witness: That is correct.

Mr. Leonard: No objection.

Trial Examiner Rogosin: General Counsel's Exhibit 49 for identification may be received and so marked.

* * *

Q. (By Mr. Hilton): Directing your attention to General Counsel's Exhibit No. 49, what are the purposes of the corporation?

A. The negotiation and administration of labor agreements on behalf of the employer members.

(Testimony of James A. Robertson.)

Q. Covering what area?

A. It covers the State of California.

Q. Principally what ports in the State of California?

A. Principally the Bay Area and Los Angeles, Long Beach Harbor areas.

Q. You say the Bay Area. You mean the San Francisco Bay Area? [91]

A. Correct.

Q. Has this Association executed collective bargaining agreements with various labor organizations over a period of years?

A. It has.

Q. Do you know how long it has been acting as a representative for employer members in dealing with labor organizations?

A. The California Association, of course, as such, and I am now testifying to that, was just since '43. Prior to that time you had two separate Associations, one the Waterfront Employers Association of San Francisco, and the other, Waterfront Employers Association of Southern California. This was a merger.

Q. This was the merger, is that right?

A. That's right. So it is one Association now.

Now, I do not know how long they have been dealing with labor organizations.

Q. What, if any, connection does the Waterfront Employers Association of California have to the Waterfront Employers Association of the Pacific Coast?

A. Most members of the California Association belong to the Coast Association. The President,

(Testimony of James A. Robertson.)

Vice President, Treasurer and Secretary are the same of both Associations.

Q. I believe you stated that the Waterfront Employers Association of the Pacific Coast acted as a policy making organization. Am I correct in that, insofar as collective bargaining agreements are concerned? [92]

A. The way that works, of course, is that the Coast Longshore Agreement—which is traditional, I believe—negotiate with the ILWU on the Longshore Agreement. The policy reached in that agreement sets the pattern for the others.

Trial Examiner Rogosin: The policy is set under the Pacific Coast Agreement?

The Witness: Yes. Once agreement is reached in the Longshore Agreement, it is just a matter—it doesn't necessarily follow, there might be a few points which have to be settled locally.

Q. (By Mr. Hilton): Does the Waterfront Employers Association of California have any agreements covering the longshoremen?

A. Not longshoremen.

Q. Do they cover units other than the longshoremen?

A. They have agreements covering carloaders and ship clerks.

Trial Examiner Rogosin: Which Association is this?

The Witness: California. [93]

(Testimony of James A. Robertson.)

Q. (By Mr. Hilton): I hand you what has been marked for identification as General Counsel's Exhibit No. 50 and ask you if you can identify that document?

A. This is the Articles of Incorporation and By-laws of the Waterfront Employers of Oregon and Columbia River.

Q. Are you an officer of that Association?

A. No, I am not.

Q. Do you have any personal knowledge as to the organization of the Waterfront Employers of Oregon and Columbia River?

A. I have personal knowledge, yes, sir.

Q. How is that knowledge obtained?

A. Visits to the port.

Q. Well, let me ask you this: Is the relationship between the Waterfront Employers Association of the Pacific Coast and the Waterfront Employers of Oregon and Columbia River the same as the relationship between the Coast Association and the California Employers Association?

A. It is. The relationship is the same.

Q. Do you know what kind of an organization the Waterfront Employers Association of Oregon is?

A. A corporation, non-profit. [95]

Q. Do you know the laws under which State it was incorporated?

A. State of Oregon.

Q. Do you know when it was incorporated?

A. December 12, 1934.

Q. Were any amendments made to the Articles of Incorporation?

(Testimony of James A. Robertson.)

A. To my knowledge the only amendment was a change in the name from the Waterfront Employers of Portland to the Waterfront Employers of Oregon and Columbia River, which took place April 1, 1948.

Q. Would you state now for the record the original name under which the corporation was incorporated?

A. The Waterfront Employers of Portland.

Q. When did you state the name of the corporation was changed? A. April 1, 1948.

Q. Can you tell us the functions of the Waterfront Employers of Oregon and Columbia River?

A. They have exactly the same functions as the Waterfront Employers of California, negotiating and administering labor agreements covering car-loaders, ship clerks. [96]

* * *

Q. (By Mr. Hilton): Now, Mr. Robertson, I believe you stated that some of your employer members are engaged in the steamship business; is that correct? A. That is correct.

Q. Could you tell us the type of business these companies are engaged in?

A. They handle cargo by water from Pacific Coast ports to all over the world, passengers also.

Q. What kind of cargo is handled, or what particular kind of cargo do these vessels carry?

A. General cargo, dry cargo, wheat, so on; everything but oil. I don't think there are any tankers belonging. [99]

(Testimony of James A. Robertson.)

Q. You have no tanker companies as employer members in the Association, is that correct?

A. Not that I know of.

Q. I believe you stated these companies operate from ports on the Pacific Coast to foreign ports; is that correct?

A. That's correct.

Q. How about the coastwise trade?

A. Well, they have trade with Alaska, Hawaiian Islands, with the East Coast, South America.

Q. Could you give us the names of a few of those companies?

A. Well, there is American Hawaiian, American President Line, Matson Navigation Company, Pacific Transport Lines.

Q. I believe you stated there were stevedoring employers as members of the Waterfront Employers Association of the Pacific Coast; is that correct?

A. Contract stevedores, yes.

Q. Can you tell us just briefly the nature of the stevedoring business in which these employers are engaged?

A. They are engaged in loading and unloading cargo in the ships.

Q. Where does the cargo come from, that is, cargo coming in on the vessels? Where would that come from?

A. You mean——

Q. When they unload the cargo off the ship, where does that cargo come from? It is coming into the State. Do you know [100] where it comes from?

A. I am afraid I don't get your question yet.

(Testimony of James A. Robertson.)

It comes off the ship on to the dock, is put in the terminal.

Q. Where does the ship carry the cargo from?

A. Oh, Hawaii, China, Australia, Alaska, South America, coffee.

Q. These vessels cover world routes, do they not?

A. That is correct.

Q. How about cargo that is being loaded on to the vessels? Where does that come from? How does it arrive at the dock?

A. Railroad car or by truck.

Q. What happens after it arrives at the dock or the terminal?

A. Well, if the ship is there it might be placed directly on the ship. If the ship isn't there it will be placed on the floor of the dock waiting for shipment.

Q. Where does that cargo go once it is loaded on the ship? Where does the ship go?

A. Well, they can go to China, Australia, Hawaii, Alaska, East Coast ports.

Q. How about the terminal companies? Can you tell us just briefly the nature of their operations?

A. Well, they receive and deliver and store cargo.

Q. You say they receive cargo. Where do they receive the cargo from? Would you explain that a little more?

A. Well, they receive it from a shipper who is going to send a load of apples off to China, and he will consign it to a [101] certain ship. It comes

(Testimony of James A. Robertson.)

down to the terminal, the terminal accepts delivery for the ship. The stevedore comes around, picks up the apples, puts the apples in the ship, the ship carries it over to China.

Q. How about on delivered cargo?

A. The stevedore takes it off the ship, puts it in the terminal, and then the consignee sends down the truck and picks it up, or it goes on railroad cars for the consignees other than in town.

Q. Now, the terminals are located on the docks, are they not? A. That is correct.

Q. Are some of the employer members of the Association engaged in all three types of businesses that you have described? A. They are.

Q. Do you have any employer members who are engaged in both the stevedoring and terminal operations? A. Yes, we have.

Q. Then are there others that are just engaged exclusively in stevedoring operations and others engaged exclusively in terminal operations? [102]

A. Yes, I think you could find just about every combination you want.

Q. Do you know the tonnage that was handled along the Pacific Coast for the year 1947?

A. I would say it was approximately 21 million tons.

Q. How do you arrive at that figure? You say you would put it at 21 million tons.

A. That is on the basis of assessments paid the Association.

Q. Are assessments paid on a tonnage basis?

(Testimony of James A. Robertson.)

A. That is correct.

Q. Of the 21 million tons of cargo handled do you have any figures as to show the percentage of cargo that was moved in states or to ports other than say the State of California—I will withdraw that. That is rather confusing.

Of the 21 million tons of cargo handled do you know how much of that cargo, what percentage of that cargo came from states other than states on the Pacific Coast and went to ports other than the ports in that state? A. No, I do not.

Trial Examiner Rogosin: Did the witness indicate what year this was for?

Mr. Hilton: 1947.

Q. (By Mr. Hilton): Now, of the 21 million tons, that covers the operations that you have described on steamship, stevedoring and terminal companies, is that correct? [103]

A. That is correct.

Q. And it was handled by members of the Association, is that correct?

A. That is correct.

Q. Do you know approximately how many tons of cargo were handled from January to May, 1948?

A. No, I do not.

Q. May I ask this: Do you know approximately how many longshoremen are employed by the employer members of the Association?

A. That is a difficult question because we have got carloaders in there, too. They are interchangeable.

(Testimony of James A. Robertson.)

Say approximately 12,000.

Q. That is along the entire coast, is that correct?

A. That is correct.

Trial Examiner Rogosin: Is that limited to long-shoremen or all types of employees?

The Witness: I would say that includes car-loaders.

Q. (By Mr. Hilton): Would that figure include clerks or checkers?

A. No, I don't think so. It would be about 15,000 if you included other groups, I believe. [104]

* * *

Cross-Examination

By Mr. Leonard:

Q. You stated as I recollect your testimony, that as of the present time there are 129 members of the Coast Association. You were able to testify to that matter, as I was able to see the record, without any reference to the exhibit. You knew that of your own knowledge?

A. That is right; yes.

Q. Do you know of your own knowledge how many of those 129 members fall within each of the four categories, steamship companies, stevedoring companies, terminal companies and agents?

A. There are 70 steamship companies and agents. I don't know the breakdown of the other groups. There are two classifications of member-

(Testimony of James A. Robertson.)

ship, not the four groups, the voting and associate members. [110]

* * *

Q. In other words, to take a specific example, if an agreement should be reached this afternoon or tonight in negotiations now going on, Mr. Foisie or you couldn't sign that without submitting to the 129 members? [120]

* * *

A. We would submit to the 129 members and then sign.

Q. I see. So that as of this moment, ten minutes before 4:00 today, the fact remains that the Association doesn't have the authority then to negotiate an agreement without first submitting it to the 129 members? A. No. [121]

* * *

Trial Examiner Rogosin: The hearing will be in order.

Mr. Hilton: Mr. Clark, will you take the stand?

HENRY W. CLARK

a witness called by and on behalf of the General Counsel, National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hilton:

* * *

Q. What is your occupation?

(Testimony of Henry W. Clark.)

A. I am General Manager of the Waterfront Employers Association. [150]

* * *

Q. (By Mr. Hilton): I will hand you what has been marked for [151] identification General Counsel's Exhibit No. 2, and ask you if you can identify that document.

A. Yes. That is the agreement between the Waterfront Employers Association of the Pacific Coast and the various ports, with the employers and the ILWU. It is familiarly known as the Coast Longshore Contract or Agreement.

Q. When did the agreement expire?

A. It expired as of June 15, 1948.

Q. Was that contract revised?

A. Since June 15, 1948, you mean?

Q. No, not 1948, you mean June, 1947, do you not?

A. Expired?

Q. It expired when? A. June 15, 1948.

Q. 1948? A. Correct.

Q. Now, were there any changes in the contract between the date of its execution and its expiration date?

A. None except the source of some awards possibly, which is provided for in the contract. [152]

* * *

Trial Examiner Rogosin: General Counsel's Exhibit No. 2 for identification may be received and so marked.

(Testimony of Henry W. Clark.)

(The document heretofore marked General Counsel's Exhibit No. 2 for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 2

Agreement

June 6, 1947.

This Agreement, dated June 6, 1947, by and between the Waterfront Employers Association of the Pacific Coast, Waterfront Employers Association of California, Waterfront Employers of Portland, Waterfront Employers of Washington, hereinafter designated as the Employers, on behalf of their respective members, and the International Longshoremen's and Warehousemen's Union, hereinafter designated as the Union.

Witnesseth

The award of the National Longshoremen's Board dated October 12, 1934, as amended by agreements of February 4, 1937; July 15, 1938; October 1, 1938; December 20, 1940; October 31, 1945; March 18, 1946; March 19, 1946; July 16, 1946, and November 17, 1946, as interpreted by arbitrators in awards rendered thereunder, is hereby extended and renewed in form so amended as to read in the manner hereafter set forth. Said amended agreement shall become effective on June 16, 1947, and shall remain in effect until June 15,

(Testimony of Henry W. Clark.)

1948, and shall be deemed renewed thereafter from year to year unless either party gives written notice to the other of a desire to modify or terminate the same, said notice to be given at least sixty (60) days prior to the expiration date. Negotiations shall commence within ten (10) days after the giving of such notice.

Section 4. The hiring of all longshoremen shall be through halls maintained and operated jointly by the International Longshoremen's and Warehousemen's Union and the respective employers' associations. The hiring and dispatching of all longshoremen shall be done through one central hiring hall in each of the ports of Seattle, Portland, San Francisco and Los Angeles, with such branch halls as the Labor Relations Committee, provided for in Section 9, shall decide. A branch hiring hall shall be opened in the East Bay area of San Francisco harbor. All expense of the hiring halls shall be borne one-half by the International Longshoremen's and Warehousemen's Union and one-half by the employers. Each longshoreman registered at any hiring hall who is not a member of the International Longshoremen's and Warehousemen's Union shall pay to the Labor Relations Committee toward the support of the hall a sum equal to the pro rata share of the expense of the support of the hall paid by each member of the International Longshoremen's and Warehousemen's Union.

(Testimony of Henry W. Clark.)

Section 6. Preference of employment shall be given to members of the Pacific Coast District International Longshoremen's and Warehousemen's Union whenever available. This section shall not deprive the employers' members of the Labor Relations Committee of the right to object to unsatisfactory men (giving reasons therefor) in making additions to the registration list, and shall not interfere with the making of appropriate dispatching rules.

* * *

In Witness Whereof, the parties hereto have executed this agreement on June 6, 1947.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION,

/s/ HARRY BRIDGES,

/s/ COLE JACKMAN,

/s/ MICHAEL JOHNSON.

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST on Behalf of
WATERFRONT EMPLOYERS OF WASH-
INGTON, WATERFRONT EMPLOYERS
OF PORTLAND, WATERFRONT EM-
PLOYERS ASSOCIATION OF CALIFOR-
NIA and Their Respective Members,

/s/ F. P. FOISIE,

/s/ HENRY W. CLARK,

/s/ J. A. ROBERTSON.

Admitted September 2, 1948.

(Testimony of Henry W. Clark.)

Mr. Hilton: May I have this marked as General Counsel's Exhibit No. 2-A for identification? [153]

* * *

Q. Now, did there come a time when the Waterfront Employers Association served notice upon the ILWU with respect to the collective bargaining agreement it had and which you have identified as General Counsel's Exhibit No. 2? A. Yes.

Mr. Hilton: May I have this marked for identification as General Counsel's Exhibit No. 6?

(Thereupon the letter above referred to was marked General Counsel's Exhibit No. 6 for identification.)

Q. (By Mr. Hilton): I hand you what has been marked for identification as General Counsel's Exhibit No. 6 and ask you if you can identify that?

A. Yes. This was a letter addressed to the ILWU on February 13, 1948, signed by Mr. Foisie, President of the Waterfront Employers Association of the Pacific Coast. The general gist of this letter is that we asked the union if they would meet with us to discuss the forthcoming expiration of our contract, and the necessary changes that we felt should be made to bring the contract into conformance with the law.

Q. Do you know whether or not the original of that letter was mailed to the ILWU? [185]

A. Yes, it was. [186]

* * *

(Testimony of Henry W. Clark.)

Trial Examiner Rogosin: General Counsel's Exhibit No. 6 for identification may be received and so marked.

(The letter heretofore marked General Counsel's Exhibit No. 6 for identification was received in evidence.) [187]

GENERAL COUNSEL'S EXHIBIT No. 6

Waterfront Employers Association
of the Pacific Coast
16 California Street
Phone DOuglas 2-7973
San Francisco 11, Cal.

(Copy)

February 13, 1948.

International Longshoremen's &
Warehousemen's Union,
104 Montgomery Street,
San Francisco 11.

Gentlemen:

Although the giving of formal notice of desire to modify our collective bargaining agreements may be deferred until April 15, 1948, we nevertheless feel it would be highly desirable to give early attention to the problem of conforming our agreements, when renewed, to the Labor-Management Relations Act of 1947.

As you know, the law prescribes as an unfair labor practice any discrimination, in respect to hir-

(Testimony of Henry W. Clark.)

ing, tenure or terms or conditions of employment encouraging or discouraging membership in a labor organization, and also prescribes any contractual provision or practice interfering with an employee's free choice in respect to membership in such an organization.

Our present Coast longshore agreement contains provisions relating to preference of employment and to control of registration and of the hiring halls which, in the opinion of our counsel, will be in violation of the law after June 15, 1948, the expiration date of our agreement. The port working and dispatching rules as well as various port labor agreements also contain provisions which should be changed to conform to the law.

So that we may adopt promptly changes necessary to bring our agreements into harmony with the law, we request an early meeting and suggest one at your convenience in the coming week.

Very truly yours,

/s/ F. P. FOISIE,
President.

Admitted September 2, 1948.

* * *

Q. (By Mr. Hilton): Now Mr. Clark, after this letter, General Counsel Exhibit No. 6, was sent to the ILWU did you have any meetings with the ILWU? A. Yes, we did.

(Testimony of Henry W. Clark.)

Q. What kind of meetings were these? With what subjects did they relate to? [188]

A. Why, we had meetings which we asked them to conduct on a more or less informal basis. They were not formal negotiations as such with a record maintained, but we wanted to discuss conformance to the law because we felt there were certain changes necessary in our contract to conform to the Labor Management Relations Act. And we asked that we get those meetings started as far in advance of the formal opening date of the contract which was April 15 as possible, so that we might be able to clear those matters aside in ample time.

Q. So you say you did have informal meetings prior to the date on which the contracts could be reopened, is that correct? A. That is correct.

Q. Do you recall what dates you had these informal meetings?

A. Yes, I made a record for my personal use of the various meetings. We had a meeting on February 21 between the parties and again on March 23, again on March 29, again on March 31, and on April 5. I believe it was about that time that the parties exchanged formal notices of opening the agreement.

Then we had meetings again on April 15, April 16, and April 19.

Q. Now, did there come a time when the United States—strike that—when the Federal Mediation and Conciliation Service entered into this matter?

A. Yes. We had no meetings after April 19

(Testimony of Henry W. Clark.)

until May 11 when the Federal Mediation and Conciliation Service called the [189] parties together, and then we met with them afterward.

Q. How many meetings and on what dates did you have those meetings with the Federal Mediation and Conciliation Service?

A. We had, I believe, 15 meetings with the Federal Mediation and Conciliation Service. I think it was 15.

Q. Can you give us the dates?

A. Yes, May 11, May 18, May 19—we had two meetings on that day, one in the morning and afternoon, really you can call it one day—May 20, May 24, June 1st, June 17, June 28, June 29, June 30, July 1st, July 8, July 19, and on August 6 we had a meeting that was called for purposes of discussing the differences between the parties, but an incident had occurred which involved the tying up of ships, and we did not discuss the purpose for which the meeting was called but simply that incident.

Trial Examiner Rogosin: Would you mind giving me the dates of the meetings following July 1?

The Witness: Yes: July 1, July 8, July 19, and this last meeting I referred, August 6.

Trial Examiner Rogosin: I understood you to say that the subject matter of that meeting was something apart from the general collective bargaining negotiations.

The Witness: Well, it happened that some ships were tied up, and we addressed ourselves to the

(Testimony of Henry W. Clark.)

immediate question rather than the purpose for which the meeting was called. [190]

We have had meetings since that date very recently. Do you want the dates of those as well?

Q. (By Mr. Hilton): Yes, give us those too.

A. Another meeting on August 28, August 29, we had two meetings, I believe, on each of those days, that is morning and afternoon or afternoon and evening. August 28, August 29, August 30, August 31 and September 1st.

On those last few dates there have been several different occasions on which the parties met, but you might call them a recess of the meetings. For example, yesterday we met at three different times during the day. I think it was three, wasn't it? Morning, afternoon and evening. You might call it separate meetings if you wish to do so.

I think that is a complete list of the meetings that we have had. [191]

* * *

Mr. Hilton: Mr. Examiner, prior to the luncheon recess I had attempted to go into these meetings by groups, that is, the informal meetings which were held between February 21 and April 5. However, I do not think it feasible to do that and will have to go into this matter, as I see it, meeting by meeting, and the witness will refer to notes, which notes will be available to Counsel for the Respondents.

I have also talked with the Counsel for the Re-

(Testimony of Henry W. Clark.)

spondents, and I think it would be better and preferable to proceed on this basis, to cover the so-called informal meetings, and then let Counsel for the Respondent cross-examine on those meetings, that is, the meetings from February 21 to April 5, and the meetings between the parties from April 5 through April 19, cover that group, and then the group with the Federal Mediation and Conciliation, cover that group.

Is that all right with you?

Mr. Leonard: That is perfectly satisfactory. There is some general testimony which has already been taken, on which we will want to cross-examine, but that will, I take it, come out when you are completely finished. [214]

* * *

Direct Examination

(Resumed)

By Mr. Hilton:

Q. Mr. Clark, directing your attention to the meeting of February 21, will you tell us who was present at that meeting?

A. For the employers?

Q. Yes, for the employers.

A. Mr. Foisie, Mr. Bryan of the Shipowners, Mr. Robertson, and Counsel, Mr. Harrison and Mr. Plant.

For the union, Mr. Bridges, Mr. Schmidt, and Mr. Bodine, Mr. Johnson and Mr. Fairley.

Q. You yourself were present at the meeting?

(Testimony of Henry W. Clark.)

A. Yes.

Q. Who acted as spokesman for the Waterfront Employers Association? A. Mr. Harrison.

Q. Who acted as spokesman for the ILWU?

A. Mr. Bridges.

Q. Can you tell us just briefly what happened at this meeting?

A. The meeting was called pursuant to the letter of February 13, and Mr. Bridges stated that he did not agree with the letter, [215] and Mr. Harrison said that our position was that the contract did not satisfy the law and that we had to bring it into conformity.

Mr. Bridges said that it would be legal if it were renewed as it is.

Mr. Harrison suggested a joint letter to the NLRB for an interpretation and Mr. Bridges would not agree.

Then Harrison said the Board could initiate proceedings and as employers we could not violate the law. Then he asked if the union would eliminate the preference clause.

Bridges said that is one point on which they might conform, or that is one point that might not conform, he put it. He said something might be worked out. The union asked our suggestions.

Harrison asked him about control of the dispatching by the union, and there was discussion on that back and forth; Bridges asking if we didn't want a union man, and we said that union membership wasn't important, and he said we can't have a closed

(Testimony of Henry W. Clark.)

shop. The law requires no discrimination in registering and dispatching men, and that anything giving control to the union on those points would violate the law.

Bridges asked if that went to all dispatchers and we said it did. Then he asked for other objections.

Harrison said there may be other sections in the working dispatching rules, but our general position was there must be [216] no discrimination.

Bridges said that employer control of the hiring hall would be just a roof over the shape-up—the shape-up being the longshore term for the way longshoremen are hired on the East Coast—and said that no other working and dispatching rule was in conflict nor is the union dispatcher, and took the position that the only point was the interpretation of the preference clause. He suggested we leave things as is.

We said it was our duty to recognize the law.

Bridges again said it could be renewed legally without a change. He pointed out that his committee was without authority to take a definite position, which we recognized, of course. Bridges said he would not serve notice to open the agreement and asked if our letter was a formal notice of opening, and we said it was not; just informal discussions.

Then Bridges asked about the Lundeborg Formula. That was a formula worked out in connection with the Sailors Union of the Pacific, and he said that the union might consider it.

(Testimony of Henry W. Clark.)

Harrison said it was an open shop, and Bridges said, "If that is it, we don't want it."

Then he asked us to look over the working and dispatching rules and let them know which ones are in conflict. We said we'd do that.

Then he asked for our suggestions as to the hiring hall and the preference clause. Harrison said dispatchers not under [217] union control. Bridges said there is nothing in the law as to how personnel of the hiring hall is selected, that control of the hiring is a joint affair and dispatchers do not hire. Harrison said the dispatcher determined who is dispatched, the employers must hire the men who are dispatched. Bridges said in the act of registration the companies as a group agree to hire men in advance, men can be discharged for cause, and the employer does not have to hire the men dispatched.

Harrison said additions to the registration list must be non-discriminatory. Under the present set-up the union can refuse to register a man. Bridges saw nothing wrong with the present registration practice and said there are some men there now that the union objects to, and that in the event of disagreement it can be carried to an Arbitrator.

Harrison asked how progress could be made, said he was bothered by Bridges' statement first that renewal of the agreement was OK under the law, and second that the committee had no authority to speak at this time.

Bridges said he was calling a meeting of the Coastwise or Negotiating Committee at an early

(Testimony of Henry W. Clark.)

date, and his small group there would make recommendations to his full committee. He said that we might exchange letters as amendments to the contract and roll along on that basis, but making any changes in the hiring hall set-up would not be good.

Harrison asked him what changes will go to methods of hiring [218] and dispatching. Bridges said we couldn't accomplish that without trouble, and his position was to avoid trouble. Harrison said the employers also wished to avoid trouble, but to conform to the law, and that is the reason we sent a letter at that early date.

Bridges said that the employers would run into trouble in depriving the union selection of dispatcher and the preference clause. Harrison said not if the union adopts a union shop clause. Bridges said they didn't want that kind.

Bridges suggested we go over the contract as we had before, and that the union could not agree that the preference clause and the dispatching hall needed changes, but that preference might be subject to legal interpretation and might require a modification.

Harrison asked if the union would consider the employers' position on the preference clause. Bridges said he would in due course give the union's position to us.

That was the sum and substance of the meeting. [219]

(Testimony of Henry W. Clark.)

Cross-Examination

By Mr. Leonard:

Q. Mr. Clark, according to the record now, the first meeting that was held between your committee and the union people was this meeting of February 21, and you mentioned, among other people present for the employers, one J. B. Bryan, and his name appears on your notes as having been present. Would you please identify Mr. Bryan for us?

A. I thought I had done so. He is President of the Pacific American Shipowners. [244]

* * *

Q. Do you recollect whether Mr. Harrison had any response to make at that time to this proposal that the contract might well be permitted to renew itself automatically?

A. Yes. He said "Our agreement does not satisfy the law and we must bring it into conformity to the law."

Q. So would it be fair to say that the suggestion initiated by Mr. Bridges, that the contract be permitted to run on without modification or terminating it, was rejected by Mr. Harrison [246] pretty much at the outset?

A. To the extent of saying that we had to conform.

Q. And immediately thereafter, according to the minutes, Mr. Harrison raised the question with respect to whether or not the union would eliminate

(Testimony of Henry W. Clark.)

the so-called preference clause, that was raised by Mr. Harrison immediately?

A. Not immediately. He first suggested a joint letter to the NLRB for interpretation.

Q. That doesn't appear to be the chronology in the written minutes, but it is all right.

A. I believe so.

Q. Yes. You are right. I beg your pardon. At any rate, when the two groups got down to talking about specific provisions in the contract, Mr. Harrison raised the question as to whether or not the union would agree to eliminate the preference clause, is that right? A. That is correct.

Q. And Mr. Bridges, speaking for the union, indicated that the union would give this matter some consideration? A. That is right.

Q. In other words, it would be fair and correct to say that with respect to that matter Mr. Bridges indicated that the union was perfectly willing to bargain on this matter and was perfectly willing to make such changes as might be indicated, and upon which the parties might be able to reach an agreement? [247]

A. I don't believe he went to that extent. His position at this meeting—and it was changed, you will notice, in the notes later—he said simply that it was, that preference was one point that might not conform and something might be worked out, and he invited our suggestions.

Q. Were any suggestions forthcoming at that time in response to that invitation?

A. I don't believe so at this meeting.

(Testimony of Henry W. Clark.)

Q. Were some forthcoming at some later meeting?

A. Yes. I believe we did, and in some of our communications we indicated something on phraseology on preference. I don't remember whether there is anything here on it or not. (Examining notes.) I see nothing, unless you would say that Harrison's suggestion that the union shop might cover that point; nothing else on preference.

Q. There was no formal written proposal which was made by the employers at this time with respect to preference, at this meeting of February 21?

A. No.

Q. It is, however, your best recollection that at some subsequent meeting, or in the course of some correspondence by you—and I mean the Waterfront Employers Association—you did make a specific proposal to the union with respect to contract language concerning preference of employment?

A. I know the union made some proposal to us, brought out in [248] some of those written minutes there; and, yes, I believe there was a specific proposal by us with reference to the preference clause. [249]

* * *

Direct Examination
(Resumed)

By Mr. Hilton:

* * *

Q. Leaving aside the exhibit for a moment, going back to April 28, were you present at any

(Testimony of Henry W. Clark.)

meeting between the representatives of the Water-front Employers Association and the ILWU?

A. Yes, I was.

Q. I believe you stated that meeting was held in regard to Clerks, is that correct?

A. That is correct. [325]

* * *

Q. Can you tell us what occurred at that meeting?

* * *

A. Mr. Johnson of the union said that the last record was the union's letter of March 22, stating the union's disagreement with the grievance machinery proposed, and the Employers' refusal to include certain classifications.

Mr. Robertson said the Employers had replied to that and stood on their previous draft. [326]

I stated that the Coast Agreement, this proposed Coast Agreement would cover all subjects that were common. By that we were using the terminology of that Memorandum of Agreement, "substantially identical," and the balance would be contained in port supplements.

Mr. Bulcke then summed up attempts to negotiate the Coast Agreement had failed to date, the contract was opened and the union had made certain demands, and they asked for a reply.

I stated that our first concern was to conform the agreements to the law and we could go into other matters.

Bulcke asked if our reference to the preference

(Testimony of Henry W. Clark.)

of hiring halls was the same as in the Longshore negotiations, and we told him that was true.

Then Mr. Robertson pointed out those points were covered in port agreements, not the Coast, but that our position was as stated.

Mr. Johnson said that the union wanted new material covered in the Coast Agreement, and since these subjects at issue—the hiring halls, dispatchers, preference of employment—were to be re-negotiated, the union wanted them negotiated in a Coast-wide agreement.

I stated that those are still matters for the ports.

Johnson said the contracts are opened, demands made, and asked what we were going to do about it.

Then Mr. Bulcke for the union said that the union believed [327] that most of the language in the port agreements could be made uniform, leaving only real differences in practice to go in the supplements.

Johnson then reiterated the question as to whether preference, our stand on preference, was the same on Clerks as it was in Longshore, and we said it was. Johnson said that the situation as regards Clerks was different from Longshore because in San Francisco monthly Clerks were not on the registration list, and asked if registered Clerks were to have preference of employment.

Mr. Robertson for the Employers said that the same proposals that had been made in regard to registered Longshoremen would hold for registered Clerks.

(Testimony of Henry W. Clark.)

Johnson asked again about monthly Clerks. He said that if a monthly Clerk lost his job he was out of work.

Gregory for the Employers said that there was no change in the present San Francisco Agreement yet needed to protect monthly Clerks who changed their jobs.

Then Johnson asked about transfers and visitors and Mr. Gregory said that he thought a uniform procedure should be adopted, but that would require permission of the Port Labor Relations Committee before men went to a new port. That is, a clearance would have to be arranged from the port the man left as well as the port the man was going to.

Bulcke asked about the vacation proposals, and we stated [328] that that was a port by port matter. [329]

* * *

Mr. Hilton: Before I call any witnesses, or proceed any further, I would like at this time to file a Motion for Leave to Amend the Complaint.

Mr. Leonard: A copy of which has just been served on me.

Mr. Hilton: Yes, a copy of which has just been submitted and served on Mr. Leonard.

I would like to file the original and six copies of the motion with the Examiner, and I think they should be marked as General Counsel's Exhibit 1-E. [380]

* * *

Trial Examiner Rogosin: Well, I shall permit

you to file such motions as you require, and will regard them as having been seasonally filed irrespective of when the evidence is being offered, or tendered, at any time before the close of the hearing, and in the event that you require additional time for the purpose of preparation of such formal pleadings I shall, of [396] course, allow such reasonable time as you may require.

So the Motion to Amend the General Counsel's Complaint is hereby granted.

General Counsel's Exhibit No. 1-E for identification may be received and so marked. [397]

* * *

Trial Examiner Rogosin: Respondent's Supplemental Answer may be marked General Counsel's Exhibit 1-G and received. [425]

* * *

F. C. GREGORY

witness called by and on behalf of the General Counsel, National Labor Relations Board, being first duly sworn, was examined and testified as follows: [445]

Direct Examination

By Mr. Hilton:

* * *

Q. How long have you been a member of the Coast Labor Relations Committee for the Longshoremen?

A. Well, the Coast Labor Relations Committee was set up under the contract of 1940, and I have been a member of it ever since its inception.

(Testimony of F. C. Gregory.)

Q. I believe you stated that part of your duties was the handling of collective bargaining agreements that had been executed between the various labor organizations and the Waterfront Employers Association? A. That is correct.

Q. Now I will hand you what is in evidence as General Counsel Exhibit No. 2-B which is the supplemental agreement or the Steam Schooner Agreement, and ask you if you can identify that?

A. Yes. That is a supplement to the Coastwise Longshore [447] Labor Agreement.

Q. Do you recall when the first supplemental agreement was entered into?

A. It was entered into just before the settlement of the 1936-37 strike, early in February of that year.

Q. What was the purpose of entering into a supplemental agreement covering the longshore work on steam schooners?

* * *

A. The award of the National Longshoremen's Board which was handed down October 12, 1934 which ended the 1934 strike was an open shop agreement. In the 1937 contract we were considering writing the preferential employment agreement but in order to preserve the status quo on the steam schooners it was necessary to have an exemption to that preferential employment agreement so that there would not be immediate fighting between the [448] cities and the longshoremen over the work. [449]

* * *

(Testimony of F. C. Gregory.)

Q. (By Mr. Hilton): Now, I believe you stated that the preference was given to certain employees under the Coast Longshore Agreement. What group of employees was preference to be given to?

A. Longshoremen. [450]

* * *

Q. (By Mr. Hilton): To what area if any did the Steam Schooner Agreement apply?

A. Well, it applied to all of the Pacific Coast ports in the United States for the type of ship that plied between those ports only, in the coastwise trade.

Q. I believe you stated that the first supplemental agreement was entered into about February of 1937. Is that correct?

A. That is correct. [451]

Q. Were subsequent agreements entered into continuously from that time?

A. Yes. The Steam Schooner supplement as originally drawn became a part of subsequent agreements up until 1940 or thereabouts, when there was a slight change in the language and the parties were changed. The original agreement was between the Shipowners Association of the Pacific Coast which is an association representing steam schooners. They later delegated the authority to the Waterfront Employers of the Pacific Coast who entered the agreement for them. That is the only change.

Q. Did the Waterfront Employers Association enter into agreements with the ILWU?

(Testimony of F. C. Gregory.)

A. They did.

Q. When was the last agreement entered into?

A. The last agreement was entered into in June, 1947.

Q. Was there any supplemental agreement entered into in June of 1946?

A. Yes. Let me see—yes, June, 1946, and then again in November of 1946.

Q. And I believe you stated there was an agreement entered into in June, 1947, is that correct?

A. Yes, sir.

Q. When did that agreement expire?

A. June 15, 1948.

Q. I believe you stated that the general purpose of the [452] agreement was to give protection to seamen employed on steam schooners, is that correct?

A. Well, I did make that statement. It was for the protection of the steam schooner employers because we were interested in steam schooner employers, and the peace between their crew and the longshoremen, and their ability to work their sailors was of primary interest to the steam schooner operators; not to the seamen. [453]

* * *

Q. When was the Coast Labor Relations Committee first established? [456]

A. It was provided for in the agreement of 1940, but was not established, that is, in December, 1940, but was not established until some time early in 1941. I don't recall the exact date.

(Testimony of F. C. Gregory.)

Q. Now, can you tell us how the Port Labor Relations Committee was established in October of 1934?

A. It was set up, as provided for in the Award of the National Longshoremen's Board, and while it was supposed to be composed of an equal number of employer and employee members, actually the first one consisted of six men from the union with three from the employers. It was set up in order to carry out the duties that were set forth in Section 10 of the Longshore Award.

Q. You refer to the Longshore Award. When was the Award handed down?

A. October 12, 1934.

Q. Directing your attention to May of 1934, what, if anything, occurred along the waterfront?

A. On May 9 a strike occurred in San Francisco and simultaneously thereafter in other ports on the Coast.

Q. And what employees were involved in that?

A. The longshoremen were involved in the original strike. Later that month the seafaring unions, sailors, firemen and cooks, went out. [457]

* * *

Q. (By Mr. Hilton): What was one of the issues in the strike of May, 1934? [462]

* * *

A. The hiring hall issue.

Q. (By Mr. Hilton): Now, did there come a time when the strike was settled?

(Testimony of F. C. Gregory.)

A. Yes, sir. It was settled on the 31st of July 1934.

Q. How was it settled?

A. It was settled by an agreement of both parties to submit the issues in arbitration to the Mediation Board which had been appointed previously by President Roosevelt.

Q. That is the Board that Mr. Leonard just referred to, is that correct?

A. That is correct. There was just one Board. It was first a Mediation Board, and finally secured the agreement of both parties to act as an Arbitration Board.

Q. Did that Board hand down any award?

A. Yes, it handed down the award of October 12, which has been referred to and which is the foundation of our present contract.

Q. What year? October 12 of what year?

A. 1934. [463]

* * *

Q. (By Mr. Hilton): After the Award was handed down on October 12, 1934, what, if anything, was done by the Labor Relations Committee?

Trial Examiner Rogosin: Which Committee are you referring to now? It seems we may get into some confusion here about whether or not you mean the Port or Coast Committee.

Mr. Hilton: The Port Committee. The Coast Committee was not established until 1940. I should have mentioned that.

A. The Longshore Labor Relations Committee

(Testimony of F. C. Gregory.)

sat almost daily, beginning with Tuesday, October 15, for the next two or three months, having various problems to iron out; among them the registration of Longshoremen in accordance with the Award of the Longshoremen's Board, which required that each port set up a registration list; and with the establishment of the dispatching hall, which was accomplished after the registration was completed and after premises could be secured and altered to take care of the situation. The hiring hall in San Francisco was not actually opened until March, 1935.

Q. (By Mr. Hilton): Now, were there hiring halls in existence at any of the other ports?

A. Yes. There had long been a hiring hall in Seattle, in Tacoma, in Portland, and in San Pedro, or in the Los Angeles area; and a few, which I am not absolutely sure about, in some of the smaller ports in the Northwest.

Q. But I believe you testified that in October of 1934 there [470] was no hiring hall in San Francisco?

A. That is correct. There was none until established by the Joint Labor Relations Committee.

Q. Now, I believe you stated that the hall actually opened in 1935, is that correct.

A. That is correct.

Q. Have you been in the hiring hall?

A. Yes, sir.

Q. Were you there frequently or infrequently, or what?

(Testimony of F. C. Gregory.)

A. Well, when we first started the hall in 1935 I was there practically daily. Since that time it has not been necessary for me to be there so frequently, but I am there, I would say as much as once a week.

Q. Can you tell us how the hiring hall functions?

A. The hiring hall is administered by the Labor Relations Committee. The men are registered by the Labor Relations Committee, given serial numbers, and the men who are actually dispatched out of the hall are given a little thing called a plug, a little round piece of fibre, upon which their registration number is stamped. The men who work out of the hiring hall—I say that because certain men, about 50 per cent of them, work in gangs which I will describe later—the men who work out of the hiring hall are called plugboard men because they put their little plugs containing their registration numbers in the holes in boards that are maintained in the hiring [471] halls. These boards are numbered, and they are divided off into various classifications.

We have a board for the hold men, a board for the dock men, a board for the jitney drivers, which is a colloquial term for tractor drivers, and for lift-truck drivers, for winch drivers, for extra gang bosses.

They are also divided into day and night board sections so if a man prefers day work he plugs in on the day board in his desired classification. If he desires night work, he plugs in the night board in his desired classification.

(Testimony of F. C. Gregory.)

The only persons who cannot pick the classifications which they may want are winch drivers, lift-truck drivers, and gang bosses. Those men have to have certain qualifications and be passed before they can plug in on those boards.

A man comes in and plugs in and the first man that plugs in in a certain classification gets the first job that is called under that classification.

The Dispatcher pulls the plugs in the same order in which they are placed in the board, calls out the jobs, and the man comes to the dispatching window and is given a slip on which his orders for a particular job are written, and he is dispatched and goes to his job and performs the work.

Q. I believe you stated that the first man who plugs in for a job in his particular classification is the first one called, is that correct? [472]

A. That is correct.

Q. I believe you also stated that the hiring hall is under the jurisdiction of the Port Labor Relations Committee, is that correct?

A. That is correct.

Q. Now how is the Dispatcher selected for the hiring hall?

A. The Dispatcher is elected by the local union in San Francisco for a period of one year. In other ports he is elected for six months' duration. In San Francisco, however, he has always been elected for one year and they are eligible to run again for dispatching the second year, but not after that.

Q. And the hiring hall that you have just de-

(Testimony of F. C. Gregory.)

scribed is that the hiring hall referred to in Section 5 of General Counsel's Exhibit No. 2?

A. That is correct.

Q. Now, I believe you stated that Longshoremen had to be registered before they could plug in on the board, or be assigned longshore work, is that correct?

A. That is correct.

Q. Now, I believe you stated that after the longshore Board Award, in October of 1934, you started on a registration list. Am I correct in saying that?

A. Yes.

Q. You say "we" started. Is that the Port Labor Relations Committee? [473]

A. That is the Port Labor Relations Committee in San Francisco. In other ports where there were hiring halls, they practically had their registration lists already, but in San Francisco we had to start from the beginning.

The Award of the Longshoremen's Board provided that any man who could prove that he had earned his livelihood on the waterfront in one year out of the preceding three years should be registered, so we—when I say "we" in this connection I mean the Labor Relations Committee, the employer and employee—drew up and had printed some application forms, and had a space allotted to us down in the Ferry Building where, for about three weeks, we kept a considerable crew of men to take registration applications of the men. Those applications were later gone over in detail by the Labor Relations Committee and acted upon. [474]

(Testimony of F. C. Gregory.)

Q. (By Mr. Hilton): I believe you stated that you had certain forms for registration prepared, is that correct? A. That is correct.

Q. Further, you stated that the qualifications for registration were that a man must show he was employed one year, or 12 months, as a Longshoreman in the preceding three years, is that [475] correct? A. That is correct.

Q. What three-year period did the Labor Relations Committee use as a basis for that determination?

A. We used the years 1931, 1932, and 1933.

* * *

Q. (By Mr. Hilton): I hand you what has been marked for identification as General Counsel's Exhibit No. 43 and ask you if you can identify that?

A. Yes. This is a copy of the application which was used at that time. [476]

* * *

Voir Dire Examination

By Mr. Leonard:

Q. With respect to this matter, did the Port Labor Relations Committee, at the time that the men were being registered after the October, 1934, Award, keep written memoranda and reports concerning the applications filed with it, and the number passed upon, and so on?

A. The applications were made in duplicate, and one copy is in my possession, and one copy in the

(Testimony of F. C. Gregory.)

union's possession, so there is no doubt of that record. The Committee did not seriously consider the applications as to rejection or admittance [477] until along in January of 1935, when they were all in, because they straggled in throughout the months of November and December. There was no surplus of Longshoremen so there was no great need for any protection of the men to include one who did not qualify. But the Committee did, during the month of January, and the early part of February intensively go through the lists.

Q. Did it keep records of its action with respect to the acceptance or rejection, written records?

A. It did—well, the action is contained principally in one report that was made by a subcommittee of two, one from the employers and one from the union, in which there were listed the men who were passed and the men who were rejected, and a few where there was a reserved position on for the General Committee to pass upon independently, where the subcommittee didn't make a recommendation.

Q. This report was in writing? A. Yes.

Q. Copies are available, copies are still extant?

A. I have a copy.

Q. And this report states the reasons for the rejections, in cases where there were rejection?

A. No—well, I would say it stated the reason, that is, the union objects, or the union challenges this man. It went no further than that.

The objections that the Waterfront Employers

(Testimony of F. C. Gregory.)

made were all [478] on the ground of the time served. We went all through the pay rolls and if a man had not put in the requisite time, we made that notation.

Trial Examiner Rogosin: You say you made that notation on the application of registration, or some other form?

The Witness: In some cases on the application, but it is in this report which covers the entire registration.

Q. (By Mr. Leonard): You say a copy of that report is available?

A. Yes. I have a copy of that report.

* * *

Trial Examiner Rogosin: How many applications were filed to your knowledge, Mr. Gregory?

The Witness: There were approximately 4,300, I think 4,317, because I just looked at the list to refresh my memory. [479]

* * *

Direct Examination

(Resumed)

By Mr. Hilton:

Q. I believe you stated there were approximately 4,300 applications similar to General Counsel's Exhibit No. 43. Is that correct?

A. That is correct.

Trial Examiner Rogosin: That is to say, applications which were filled out and signed and executed and submitted to the Joint Committee?

(Testimony of F. C. Gregory.)

The Witness: That is correct.

Q. (By Mr. Hilton): How many of the applications that you received—strike that.

Of the 4,300 men who applied to be placed on this registration, how many were actually placed on the registration list? [482]

* * *

A. There were approximately 3500 men who were originally passed by the committee. That was in February of 1935, prior to opening of the dispatching hall.

Q. (By Mr. Hilton): Now I believe you stated that there were some applicants who were not fully qualified. Is that correct? A. That is correct.

Q. By that you mean—what do you mean by “not fully qualified”?

A. They did not qualify in having earned their principal living during one year out of the three preceding as laid down in the Longshoremen's Board Award. That was the only qualification that was laid down in that Award.

Q. What if anything did the Labor Relations Committee do with respect to these men who were not qualified as you have stated?

* * *

A. On some of them, both the union and the employers were willing to accept them and they were finally registered. On the majority of them that were objected to by the union they were not registered, it being taken as a real principle by

(Testimony of F. C. Gregory.)

the two parties that mutual agreement had to be secured to register a man. [484]

Trial Examiner Rogosin: That is to say, to register a man who lacked adequate experience within the meaning of the Award?

The Witness: That is correct. There were some objections on the part of the union to men who actually had the full experience, but we insisted upon their registration and the union acquiesced.

Q. (By Mr. Hilton): What if any designation was given to this group of men which you have stated——

Mr. Leonard: Before that question is answered may I ask the witness just one question on this point for the sake of continuity in the record?

Trial Examiner Rogosin: Do you have any objection?

Mr. Hilton: I have no objection.

Trial Examiner Rogosin: It may be done.

Mr. Leonard: Did I understand from what you said, Mr. Gregory, that every employee who was qualified under the terms of the Award was registered?

A. All those who signed the applications and were qualified were registered, yes, sir.

Mr. Leonard: So no employee who submitted an application and who was qualified was not registered?

The Witness: As far as I can recall that is correct.

Mr. Leonard: Thank you.

(Testimony of F. C. Gregory.)

Trial Examiner Rogosin: You may proceed, Mr. Hilton. [485]

Q. (By Mr. Hilton): The men who were not fully qualified, as you have stated, but who were permitted to work by the Labor Relations Committee, what if any designation was given to those men?

A. Some of them were fully registered, but I would say the larger part of those who were in question were given permits, the union not agreeing that they should be fully registered because they were not at that time members of the union. [486]

* * *

Q. (By Mr. Hilton): After the applicants for registration had been registered was any roster prepared by the Labor Relations Committee?

A. Yes.

Q. In what form was that roster prepared?

A. The roster was prepared and was printed in, I believe, April or May of 1935, shortly after the hiring hall was opened.

Q. What, if anything, did you do with the roster after you had it printed?

A. Well, we distributed it, copies to all of the employers, so that they would know who the registered men were and make copies available to the union throughout all of its offices, and so forth.

Q. How about the dispatchers?

A. Well, the dispatchers naturally were included.

(Testimony of F. C. Gregory.)

Q. How were the individual registered men advised?

A. Well, the registered men were advised, the fully registered men were issued what were termed brasses which were small brass [487] checks upon which their number was printed.

The permit men were given a permit card upon which their registration number was stamped, and the "P," the prefix letter "P" before it showed they were permit men. There were other means of identification too, but those were the principal ones.

Q. I believe you stated that the hiring hall opened in about March of 1935; is that correct?

A. That is correct.

Q. And you have outlined the method of dispatching the men from the hiring hall. From where were those men taken? How were they selected?

A. You mean how were they selected for dispatch?

Q. Let me withdraw that. You stated that the hiring hall commenced operations in about March of 1935. What, if anything, did your registration list have to do with the hiring hall?

A. Well, we had registered the men. In fact, one of the first things we did when we opened the dispatching hall was to issue the brasses and plugs to the men who were registered, and the ones who did not have those credentials were not allowed to plug in because they were not given any plugs and they were excluded from the gangs.

Trial Examiner Rogosin: You say "one of the

(Testimony of F. C. Gregory.)

first things we did," and I assume you are still talking about this Joint Committee?

The Witness: The Joint Committee, yes, [488] sir.

Q. (By Mr. Hilton): How about an individual who was not on the registration list that you have stated was prepared and the roster, and so forth. Was he permitted to go in the hiring hall and secure a job?

Mr. Leonard: I object to the question as incompetent, irrelevant, immaterial. Also hypothetical.

Trial Examiner Rogosin: It seems to me the real objection to the question, the one real ground for the objection would be leading, and that hasn't been urged, so I will overrule it.

Mr. Hilton: I was thinking that myself.

Trial Examiner Rogosin: It seems to me, Mr. Hilton, now we are getting down to what may be crucial issues, that we ought to avoid leading insofar as possible.

Q. (By Mr. Hilton): I believe you stated that the registration list which was prepared and distributed was the list from which the dispatchers dispatched men to the jobs. Is that correct?

A. That is correct. Also that list made the man eligible to plug in on the plug board because he had a plug that was issued to him by the Joint Committee.

Trial Examiner Rogosin: May I interject for a moment to clear this up in my own mind? Was the

(Testimony of F. C. Gregory.)

plug something different from the brass you speak about?

The Witness: The brass was a small oval brass check they wore on their watch fob for identification. The plug was a [489] small piece of fiber like that (indicating) on which the man's number was stamped. That number on there is the registration number. It is a small cylinder of fiber about three-eighths of an inch in diameter, one side of which has been smoothed off to allow the stamping of the man's registration number.

Each man who is working out of the plug board or out of the hall has one of these plugs which he inserts in a hole that just fits in the dispatching hall. The plugs are inserted in rotation, one after the other, as the dispatcher pulls the first plug that is put in, fills the first job, and subsequently the second and third and fourth plugs to fill subsequent jobs.

Trial Examiner Rogosin: As I understand it, these plugs are plugged into specific boards covering either night or day work or specific vocational jobs?

The Witness: Night or day and classifications. They are night or day, and each night and day is divided into various classifications.

Trial Examiner Rogosin: Let the record show that the witness has produced from his pocket and exhibited to the Examiner in the presence of counsel an object such as he has rather graphically described, it seems to me, in the record.

(Testimony of F. C. Gregory.)

Is that a fair statement, gentlemen?

Mr. Leonard: Yes, sir. I have no objection to his putting it in evidence if you would like. [490]

Mr. Holmes: He didn't state the length.

Trial Examiner Rogosin: I think he did, didn't he?

The Witness: No, I didn't. It's about an inch and a quarter long, but it is just long enough to go through a 5/8-inch board which is called the plug board and have ample room on the inside for the dispatcher to pull it out without difficulty.

Trial Examiner Rogosin: As I understand it, the dispatcher who removes the plug has no way of telling whose plug that is until he has completely withdrawn the plug and examined the number which appears to be stamped on it?

The Witness: That is correct. The dispatcher then—if you want to complete the process of dispatching for the record—the dispatcher then calls out the number that is on this plug over a loud speaker system. If the man is in the dispatching hall he comes to the window, is handed back his plug together with his dispatching orders which are written out on a small sized tag.

Trial Examiner Rogosin: What happens if the man isn't within the hearing of the voice of the dispatcher?

The Witness: Well, he is given three calls at brief intervals, and if he does not respond to any of these calls he misses his plug, it is set aside, and he misses his opportunity to work that day.

(Testimony of F. C. Gregory.)

Trial Examiner Rogosin: Does that mean that he has to [491] wait then until they go through all the rest of the plugs and start all over again?

The Witness: Normally he would, yes, unless he would come up to the dispatcher and explain his absence in a satisfactory manner.

Trial Examiner Rogosin: Would the dispatcher then have authority to restore him to his place in order? Is that something that the dispatcher has discretion about?

The Witness: Well, the dispatcher uses his discretion on that, I would say, without any specific interference from the Committee. But there are not very many plugs missed, and if a man comes in who is known to be a steady worker and he says, "I was held up on the bridge by an automobile accident," or "I got a flat tire and I didn't get in until 15 minutes late," he is generally then given an opportunity to have a job right along with the rest of the men.

Trial Examiner Rogosin: Thank you. I am not sure that it has any specific bearing on the particular issues we are concerned with, but just to complete the picture for my own information——

Q. (By Mr. Hilton): I believe you stated that the registration list and the roster was used by the dispatcher in sending out these men on jobs. Is that correct?

A. Well, the roster wasn't particularly used by the dispatcher unless there was a necessity of looking up an individual to see [492] whether he was

(Testimony of F. C. Gregory.)

registered or not. The man having his plug put in the board, the fact that he had a plug and was in the board was taken as evidence that he was registered. There were very, very few cases over the years where men have secured plugs illegitimately, but they are not a material factor.

Q. Has the committee ever received any complaints about non-registered men having a plug?

A. Yes, and we have acted on them.

Q. Could you tell us approximately how many times that has happened?

A. Oh, probably half a dozen times in 14 years, and in each case the man who helped the man secure the plug was summarily dealt with as well as the man who owned the plug. So it is not a question as regards any complaint against the dispatching system.

Trial Examiner Rogosin: The number, I take it, on the plug, corresponds with the registration number which was originally assigned to the particular longshoreman?

The Witness: That is correct.

Q. (By Mr. Hilton): Would there be any instances where the dispatcher would have to go outside of the registration lists in order to secure longshoremen for any particular jobs?

A. Yes, sir.

Q. When would the dispatcher do that?

A. Well, the dispatcher will pull all of the plugs in the [493] given section at the dispatching hour. Now, the dispatching hours are from 6:30 to 8:30

(Testimony of F. C. Gregory.)

in the morning and from 4:00 to 6:00 in the afternoon. If orders come in in between there, a registered longshoreman is not required by the rules of the Labor Relations Committee to accept a job unless he desires. In that case it is necessary if they are going to fill an emergency job, to go outside of the registration list. Registered men are given the first opportunity to those jobs, but then there have been frequent times during the past 14 years when the entire registration list as shown by the men in the plug board has been exhausted and still there are calls for men, one or two men to fill out a gang or half a dozen men for carloading, or something like that where the dispatcher has no registered men to work with at all. In that case he has to go outside the registration list to fill those orders.

Q. What would be the usual procedure in filling such a request for an employee?

A. The dispatchers would generally first call on the warehousemen's union, Local 6, ILWU, then on the Scalers Union——

Mr. Holmes: Another local union?

The Witness: Yes, and other local unions before they would then tell the employer they could not secure any men for them.

Q. (By Mr. Hilton): What, if anything, can the employer do then if he hasn't secured that man? [494]

A. If the dispatcher tells the employer absolutely there are no men available, then the em-

(Testimony of F. C. Gregory.)

ployer has the right which he does not very often exercise, to go out and hire anybody he wants to. These men who are dispatched who are not registered men are given a white ticket, a one-day dispatch, and are not eligible to hold that job over the one day unless their employer is told by the union before the close of that shift that they had better keep this man on because there is going to be a shortage again tomorrow. That is sometimes done.

Q. What, if anything, happens to this man if there is a registered man available in that classification?

A. Well, in the first place he wouldn't be called or he wouldn't be employed if there was a registered man available.

Q. I mean, after this man has secured—this non-registered man has secured the job and given the one-day card.

A. He would work out that day regardless of whether a registered man showed up later or not, but he would be laid off at the end of the day.

Q. I believe you stated that the Labor Relations Committee gave permits to this certain group of employees when the registration list was first set up. Is that correct?

A. That is correct.

Q. How long did that system remain in effect?

A. That system remained in effect until July of 1947, when [495] the union finally took into its membership all the remaining permit men, and they were given full registration. There have not been any permits granted since that time because there

(Testimony of F. C. Gregory.)

have been no new registrations or practically no new registrations, and those have been to experienced men that the union was willing to take in.

During the war time we had periods of more permit men than we did registered men.

Q. That was just during the war, is that correct?

A. That is correct. Always from 1935, up until 1937, there have been some permit men on the registration list.

Q. During, say, about August of 1945, approximately how many men did you have registered?

A. In August, 1945, we had approximately 10,000 men on our rolls.

Mr. Leonard: Excuse me, there is a little ambiguity there. The question was how many men were registered; the answer was "on their rolls." Is that the same thing?

The Witness: No. There were 10,000 men who were either fully registered or permit men.

Trial Examiner Rogosin: But all longshoremen you are talking about?

The Witness: Longshoremen who were either fully registered or permit men.

Q. (By Mr. Hilton): Did there come a time when that number [496] was reduced?

A. Yes. Toward the end of September or in October of '45, the Labor Relations Committee reduced the registration by approximately 1,000 men, arbitrarily taking the last 1,000 men who were registered and telling them there was not any work for them.

(Testimony of F. C. Gregory.)

Q. That is the newest 1,000 men on the list who were dropped, is that correct?

A. That's right. The last 1,000 who had been registered. But those were all permit men.

Q. That left you with approximately 9,000?

A. That is correct.

Q. On the registration list, or who had permits, is that correct? A. Yes.

Q. Has that number been reduced since September or October, 1945?

A. Yes, it has been reduced to about 650 at the present time on the list.

Q. At present? A. At present about 650.

Trial Examiner Rogosin: I take it these are all now registered men?

The Witness: They are all now registered men.

Q. (By Mr. Hilton): Now, how about additions to the [497] registration list. Have any new men been added to the registration list?

A. Oh, there were additions to the registration list in each year since 1935, and taken in by the Committee generally on the permit basis. Then when they were initiated into the union they were given full registration. That is true up to even the present time, but during 1948, the only additions that have been made have been men who have left the industry, formerly registered men who had dropped out and have come back and been re-registered.

Q. Since August of 1945, when you dropped the

(Testimony of F. C. Gregory.)

1,000 newest men from either the registration list or the permit list have you added any names to the list?

A. Yes, we have added a few. We have deleted very many more, but we have added a few men who are sons of longshoremen who have come of age and wanted to follow in their fathers' profession. We have always given first preference to them. Men who have been formerly registered in the industry who dropped out and have come back have been re-registered. But the number that have been registered has been comparatively small while the number who have been dropped has been comparatively large.

Q. Directing your attention to General Counsel Exhibit No. 2, Section 4, Page 12, it provides that each longshoreman registered who is not a member of the ILWU shall pay to the Committee [498] a sum equal to the pro rata share of the whole by each member of the ILWU. Is that correct?

A. That is correct.

Q. What has been the practice of the Labor Relations Committee with respect to that provision?

A. That has never been observed by the Labor Relations Committee. We attempted, that is, the employers attempted in 1935 to get an understanding as to what the permit fees would be, and an accounting of them to the Labor Relations Committee. The union refused. So there has never been in this port any accounting of the moneys

(Testimony of F. C. Gregory.)

that have been taken in for permit fees. Those have gone to the union.

* * *

Q. (By Mr. Hilton): Now, again directing your attention to [499] Section 4, Page 12, of General Counsel's Exhibit No. 2, this section provides that the expense of the hiring hall shall be borne one-half by the ILWU and one-half by the employers. Is that correct? A. Yes.

Q. Could you tell us how that works out?

A. Well, immediately upon the starting of the dispatching hall in San Francisco the Longshore Labor Relations Committee of San Francisco set up a joint bank account in its own name contributed to 50-50 by the employers and the union, and at the present time that account has a total of \$10,000 in it, \$5,000 of which is contributed by the union and \$5,000 by the employers; the parties being billed once a month for one-half of the actual expenses of the committee during the preceding month.

Q. How many dispatchers do you have at the San Francisco hiring hall?

A. We have six in San Francisco. One of them is termed the Chief Dispatcher, one of them is the Assistant Chief, and the other four just dispatchers.

Q. Are their salaries paid by the Labor Relations Committee? A. Yes, sir.

Q. And in turn, of course, that is divided among the employers and the union, is that correct?

A. That is correct. [500]

(Testimony of F. C. Gregory.)

Mr. Hilton: Mr. Examiner, I have about finished with that line of questioning on Section 4. You did mention that you might want to interrupt with some questions.

Trial Examiner Rogosin: I assume you intend to deal with the question of registration of longshoremen who are not members of the union, and the payment of the pro rata share, as described in the last sentence of that paragraph. I am not going to interject unless you don't intend to cover that.

Q. (By Mr. Hilton): Directing your attention to the last sentence which provides for non-registered longshoremen paying to the Labor Relations Committee toward the support of the hall a sum equal to the pro rata share of the expense of the support of the hall, can you explain that provision, please?

A. Well, that was in the original arbitration award but, as I stated previously, in San Francisco it has never been effective; the union, with respect to their permit men refusing to turn over their permit fees to the Joint Committee, so that has been a dead letter as far as San Francisco is concerned.

At the present time there is only one non-union registered longshoreman, and he is a lone wolf, you might say.

Trial Examiner Rogosin: When was he hired?

The Witness: He was in the 1934 registration but he was, you might say, expelled from the union in January of 1947, but he retained his registration.

(Testimony of F. C. Gregory.)

Q. (By Mr. Hilton): I believe you stated he is the only [501] non-member of the union who is registered?

A. The only one to my knowledge who is still working as a longshoreman who has not been removed from the roster.

Q. What date did you state all registered longshoremen were taken into the union?

A. During the month of August, 1947.

Q. Well, prior to the time when you had men registered who were not members of the union, how did the Labor Relations Committee collect the pro rata share of that individual?

A. It has never collected it.

Trial Examiner Rogosin: Since the original agreement?

The Witness: That is correct.

Q. (By Mr. Hilton): Is there any reason or explanation for it?

A. Well, the only explanation that I know is that in 1935, after the hall was started, and the union was collecting permit dues, they were requested in the Joint Committee to make an accounting of those dues and to turn them over to the committee because the union was the one that was collecting the dues on the permits and reissuing the permits after the men were first given a permit by the Committee, and they merely refused to do it.

Mr. Hilton: I have finished with that line of questioning, Mr. Examiner. Do you desire to ask any questions yourself on it?

(Testimony of F. C. Gregory.)

Trial Examiner Rogosin: You may proceed. Thank you. [502]

Q. (By Mr. Hilton): You have been handed what has been marked for identification as General Counsel's Exhibit No. 44, and I will ask you if you can explain that?

A. This was the agreement that was entered into first on December 20, 1940, and was continued on until 1945-46. It is a copy, a printed copy of that agreement. It was printed by the Labor Relations Committee so that all longshoremen, as well as all employers, would have available for them an authentic copy.

Q. The Longshore Labor Relations Committee, whose name appears on the cover, is that the committee of which you are a member?

A. Yes. That is the Joint Committee. That is the name that it adopted in 1934, and has gone under ever since.

Q. Directing your attention to what appears on the caption as "Working and Dispatching Rules," can you identify the working and dispatching rules as contained in the exhibit?

A. Yes. The working rules are printed, starting on Page 21 and going to the middle of Page 25.

The dispatching rules start on Page 25 and go to Page 29.

Q. Now, who adopted and established the working and dispatching rules?

A. They were both worked out in the Joint Labor Relations Committee during November, De-

(Testimony of F. C. Gregory.)

cember, January, 1934, and 1935. When the Committee reached agreement upon them they [503] were submitted then to both Associations for approval and were so approved.

Q. Are these working rules and dispatching rules in effect now?

A. With a very few exceptions.

* * *

Q. Directing your attention to the dispatching rules, which commence at Page 25, can you tell us what, if any change, has been made in the dispatching rules? [504]

A. Paragraph 7, Extra Gangs, has been changed in that the gang now consists of one gang boss, two deck men, six hold men and two dock men. Four dock men and one jitney driver have been removed from the gang and are employed directly by the walking boss of the company.

Q. In the same section, 7 (a), so that the number of the standard gang of 16 is reduced to 11, is that correct?

A. That is correct.

Q. Do you recall when that change was made?

A. It was made in June of 1947.

Q. Are there any other changes?

A. Not that I recall.

Q. Directing your attention to Section 5, Preferred Gangs, have there been any changes there?

Trial Examiner Rogosin: 5 or 6?

The Witness: 6.

Mr. Hilton: 6, on Page 26.

A. There has been no change in the rules, but

(Testimony of F. C. Gregory.)

There are no more regular or preferred gangs. The preferred gang was the name that was given to a gang that was regularly employed by one company.

Q. What happens to all gangs now?

A. They are, all of them, extra gangs or hall gangs. All of them are rotated through the hall.

Q. How long has that been the practice? [505]

A. Since 1938.

Q. Directing your attention to Section 8 of the dispatching rules, on Page 28, have there been any changes at all with respect to Section 8 (b)?

A. 8 (b)——

Q. I will withdraw the question.

A. Well, that was never actually observed down here because it was impractical to pull a man's plug and put it at the bottom of the list. But in effect it was put into effect by the Labor Relations Committee and the union limiting the amount of work in any one week when there was a shortage of work, for setting port hours, and any man who went beyond that was subject to penalty.

Q. That was under the equalization of work clause in the agreement, is that correct?

A. Yes. That was found to be much more practicable than to put it up to the dispatcher to remove a man's plug and put it at the bottom of the list.

Q. Directing your attention to Page 29 of the exhibit for identification, which is captioned "Rules for Registered Longshoremen," are they still in effect?

(Testimony of F. C. Gregory.)

A. They have never been changed. I think that, outside of No. 2, we no longer, since the war time, are using brass checks, but are using identification cards. They are practically all in effect at the present time. If a man loses his [506] identification card he is charged the dollar by the committee instead of 50 cents.

Q. How about the General Dispatching Rules on Page 28, have there been any changes?

A. Those were adopted by the union membership and merely printed in here for the convenience of the members. Whether or not they have been changed I could not tell you.

Q. And the General Rules on Page 29, as adopted by the ILWU membership, they are as stated?

A. Pardon me. I was referring to those in my last answer.

Q. My question was directed to the General Dispatching Rules on Page 28.

A. No, they have never been changed.

Mr. Leonard: To clear the record at this point, those general dispatching rules on Page 28 were jointly adopted?

The Witness: That is correct. The ones on Page 28 were rules of the Joint Committee. The ones at the bottom of Page 29 were union adopted rules which were printed for the convenience of the members.

Mr. Hilton: I would like to offer this in evidence as General Counsel's Exhibit No. 44.

(Testimony of F. C. Gregory.)

Mr. Leonard: The whole document, Mr. Hilton, or just the part beginning on Page 21?

Mr. Hilton: Just what I have covered in here, the working rules. [507]

* * *

Trial Examiner Rogosin: The exhibit is received with that qualification.

(The document heretofore marked General Counsel's Exhibit No. 44 for identification was received in evidence.) [508]

GENERAL COUNSEL'S EXHIBIT No. 44

Dispatching Rules

San Francisco Longshore Dispatching Hall

Dispatching and Dispatching Hours

1. Men shall be ordered so they will be able to be dispatched during regular dispatching hours.

2. Dispatching Hours:

6:30 a.m. to 8:30 a.m.

11:00 a.m. to 12:30 p.m.

4:00 p.m. to 6:00 p.m.

Hall open from:

6:00 a.m. until 6:00 p.m. Week Days.

7:00 a.m. until 9:00 a.m. Sundays and
Holidays.

(Testimony of F. C. Gregory.)

General Counsel's Exhibit No. 44—(Continued)

3. All gangs going to work before 8:00 a.m., or ordered to travel before 7:15 a.m., must receive their orders before 3:00 p.m. the preceding day, including Sundays and Holidays.
4. Orders for gangs to turn to at 8:00 a.m. must be in with the dispatcher by 7:00 a.m. When a ship is in port, or its arrival is assured by 8:00 a.m., orders for gangs to turn to at 8:00 a.m. should be received at the Dispatching Hall the preceding evening.
5. Gangs or men to go to work between 8:30 a.m. and noon, must be ordered between 7:00 a.m. and 8:30 a.m.
6. Orders for gangs or men to turn to between 1:00 p.m. and 5:00 p.m. must be in with the dispatcher between 11:00 a.m. and 12:30 p.m.
7. Orders for gangs to turn to at 6:00 p.m., or later, must be in by 3:00 p.m.
8. Gangs and men must be ordered for a specific time and job.

Organization of Gangs and Extra Men's Lists

1. The registered men of the port will be divided into gangs and extra men.
2. Gangs will be divided into preferred gangs which will be assigned to companies, and extra gangs which will be available for dispatching to any company as needed.

(Testimony of F. C. Gregory.)

General Counsel's Exhibit No. 44—(Continued)

3. Extra men will be listed according to their special qualifications, such as winch drivers, jitney drivers, etc., to assist in dispatching.
4. Extra gangs and extra men will be dispatched in rotation.
5. The work will be divided as evenly as practicable among all registered men.
6. Preferred Gangs:

(a) Each employer will furnish the committee with the number of gangs and the names of gang bosses which he wishes to have permanently assigned to him. This number will be limited to his ability to provide the average work over the four weeks' period. If such gangs prefer to work for the employer instead of working as extra gangs, they will be so assigned and will be available for extra work only after all extra gangs are working or have received more than the average work of the port at that date.

(b) Such preferred gangs may consist of any number of men which is most desirable for the regular operations, but all members of such gang must be employed while the gang is working. Members of a gang may be assigned to do other work, providing that two or more gangs shall not be split to form an extra gang.

(c) The employer will select his preferred

(Testimony of F. C. Gregory.)

General Counsel's Exhibit No. 44—(Continued)

gangs and furnish the committee with the names and permanent numbers of such members. The names of such gang members will not be listed on the extra board.

(d) When an employer no longer wishes to employ a preferred gang, he shall notify the gang boss and the dispatcher and at the end of the job the gang will be returned to the extra gang list.

(e) When a preferred gang wishes to return to the extra gang list, it shall inform the employer and the dispatcher and at the end of the job the gang will be returned to the extra gang list.

(f) If a member of a preferred gang wishes to leave that gang, he will notify his gang boss and the Dispatcher and will be relieved as the job is completed and a replacement can be secured from the list of extra men.

(g) Any temporary replacements in a preferred gang, or any temporary additions thereto, shall be assigned by the Dispatcher from the extra men's list, and upon completion of the job shall be returned to the extra list. If such vacancy is to be of a considerable length of time, due to injury, illness or other causes, the employer may request the Dispatcher to assign an extra man to this vacancy pending the return of the regular member.

(Testimony of F. C. Gregory.)

General Counsel's Exhibit No. 44—(Continued)

7. Extra Gangs:

(a) Extra gangs will be formed under the direction of the committee and will consist of a standard number of 16 men:

1 Gang Boss

2 Deck Men

6 Hold Men

6 Dock Men

1 Jitney Driver

(b) Extra gangs will be listed upon the rotation board by their number, and shall be dispatched in rotation, excepting that if an extra gang shall have worked substantially more than the average of the extra gang list, the dispatcher may place it at the bottom of the list until such time as work is equalized.

(c) If an employer desires larger than a standard gang, he will so inform the dispatcher and the additional men shall be taken from the list of extra men.

(d) If an employer desires less than a standard extra gang he will order the desired number of men and the Dispatcher will dispatch such men from the extra men's list.

(e) If an extra gang shall refuse a job when called in rotation, it shall be placed at the bottom of the list, unless the gang gives the Dispatcher a valid reason for such refusal.

(Testimony of F. C. Gregory.)

General Counsel's Exhibit No. 44—(Continued)

8. Extra Men:

(a) The extra men shall be placed on lists according to their special qualifications if they so desire:

1. Winchdrivers and Hatchtenders.
2. Jitney Drivers.
3. Hold and Dock Men.
4. Lumbermen.
5. Car Men.

(b) The men on these lists will be dispatched in rotation, excepting that if individuals have received more than the average amount of work of the extra men's list, they may be placed at the bottom of the list until such time as work has been equalized.

(c) If an individual called in turn refuses to accept a job, he shall automatically go to the bottom of the list, unless the man gives the Dispatcher a valid reason for such refusal.

9. In attempting to equalize the work of the port individuals or gangs that refuse work when called will not be entitled to have their hours equalized during that period at the expense of the gangs or individuals who have accepted such jobs.
10. Any employer may retain a "specialty gang" if sufficient "specialty" work can be supplied to enable such gang to work the average hours of the port.

(Testimony of F. C. Gregory.)

General Counsel's Exhibit No. 44—(Continued)

General Dispatching Rules

1. No gang shall be preferred by more than one company.
2. Upon completion of a job or ship, all gang bosses shall turn in their gang reports to the Dispatcher (printed report cards).
3. Upon the completion of a job or ship, all gangs and/or men shall receive their orders for the next job from the Joint Dispatching Hall.
4. All gangs may call the Hall for orders by telephone if it is practicable to do so.
5. All replacements called to fill temporary vacancies in all gangs must finish the job or ship for which they are called, unless otherwise provided for.
6. When an extra gang is hired it shall not be replaced by any other gang, until the gang has had at least least six hours' work.

Rules for Registered Longshoremen

1. Registered longshoremen are required to report at the Dispatching Hall upon notice from the Labor Relations Committee.
2. First Brass Check (permanent registered number) will be issued free. If lost, a charge of 50c for a duplicate check will be made.

(Testimony of F. C. Gregory.)

General Counsel's Exhibit No. 44—(Continued)

3. Carry Brass Check at all times.
4. Report loss of Brass Check to the Dispatcher at once.
5. No interchange of Brass Checks allowed. Any infringement of this rule may mean temporary suspension from the registered list.
6. Men who do not report for work for a period of thirty days will have their names removed temporarily from the dispatching list. Men desiring a leave of absence must leave their Brass Checks with the Dispatcher. Men on sick or injured list must report to Dispatcher before they will be replaced on the dispatching list.

Approved by the
Longshore Labor Relations Committee
February 18, 1935.

Admitted September 15, 1948.

Q. (By Mr. Hilton): Now, Mr. Gregory, are all of the registered longshoremen in regular gangs or in any other type of gangs?

A. About 50 per cent, roughly, of the men, are organized into regular gangs. About 50 per cent of them secure their work through the plug board.

Q. What do you mean by regular gang?

A. A regular gang is a gang that has been au-

(Testimony of F. C. Gregory.)

thorized and built up under the direction of the Labor Relations Committee, and it consists of a gang boss, two winch drivers, six hold men, two dock men as described in the dispatching rules there. That gang having been authorized to be built up under the direction of the committee works as a unit, and it reports to the dispatcher as a unit instead of as a group of individuals.

Q. Is there anyone in charge of this gang?

A. Yes, the gang boss.

Q. Approximately how many regular gangs do you have in the Port of San Francisco?

A. There were 258 during the months of July and August.

Q. Of 1948? A. Of 1948, currently, yes.

Q. Now, how about the men who are not in regular gangs? What do you call them?

A. They are the plug board men.

Q. How are the plug men hired?

A. They are hired as I described previously through inserting [509] the plug on which their registration number is stamped into the particular section of the plug board, either day or night, where they desire to get the job. Then when there is an order that comes in for extra men in that category the dispatcher pulls out the plug and dispatches the man to that job.

Q. I believe you have already stated that the hiring is on the rotary system. Is that correct?

A. That is correct.

Q. When an employer needs a gang or needs

(Testimony of F. C. Gregory.)

some plug men how does he go about getting them?

A. If he wishes a gang he telephones to my office because frequently there is a gang shortage and it is necessary to distribute the gangs among the orders that are placed in what we consider an equitable manner. When the orders are all in by 10:30 in the morning, my office goes through and balances the number of orders as against the number of available idle gangs, and then as we call it, we allocate them, fill the orders in accordance with the arrival of the ships or the particular importance of the passenger ship or a refrigerated cargo ship, something like that. Then the orders are telephoned by my man to the Chief Dispatcher who assigns the gangs.

The gangs are assigned by the Chief Dispatcher or the Assistant Chief Dispatcher. The two men work very closely together, and if there is an actual gang shortage we let the union know so that they can, if they can, rake up another gang [510] or build up another gang, why they will do so.

The gangs are then given their orders. Now, a gang may be ordered just as 11 men. It is not very frequent, but if they have a job that is discharging a ship to the dock they may order just 11 men, a gang, and order their dock men separately. Or they may order that gang as a 13-man gang or 16-man gang or any other larger than the 11-man minimum unit.

If the gang is larger than the minimum unit of 11 men then it is necessary for the dispatcher to

(Testimony of F. C. Gregory.)

assign to that gang from the plug board sufficient men to fill up, and if the gang is short-handed through illness or desire of a man to be off for a particular day, he has to fill out those shortages too.

So that the routine is this: We give the union, the employers give to the union Chief Dispatcher the number of gangs that are needed, the ships to which they are to be dispatched, and the size gang units that are to be dispatched to each of these jobs. Then the gang boss who is under orders from the dispatcher to call in for his orders at a certain hour, calls in, and he says, "You go to, for example, Pier 30, to the Hawaiian Planter. You want six or eight hold men and two deck men and two dock men. The company is taking care of the rest of it through their regular dock men that are employed in another manner," that is, employed separately.

The gang boss will then say, "Well, you have to send me [511] two hold men because I only have six in my regular complement, and you will have to send me one dock man because one of my dock men is off sick."

That is accomplished over the telephone and the orders for that particular job, that particular gang are written up in the dispatching hall for first one big sheet, and then a number of individual dispatch orders for each of the men that is needed for that job. Those are placed at the dispatching window, and when the dispatcher for that particular gang comes up the dispatcher takes those sheets, he pulls two hold men's plugs, one dock man's plug out,

(Testimony of F. C. Gregory.)

calls the numbers, the men come up and are dispatched and their plugs returned to them. The men then have received their orders for the job which include the dock, the ship, the company and the hour of reporting, and the gang to whom they are to report.

Q. I believe you stated previously in your testimony that the only time the dispatcher assigns a non-registered man to a job is where there are no registered men available. Is that correct?

A. That is correct.

Q. Are non-registered men permitted in the hiring hall?

A. Yes, if they behave themselves.

Q. Do you maintain any list other than the registration list that you described?

A. No, we do not. [512]

Q. When you say they permit non-registered men to be in the hall, do you mean they can bid on jobs?

A. No. The only time that a non-registered man would be in the hall looking for a job would be toward the end of a dispatching period if he was anxious to get a job. He would be there ready to take a job as soon as the dispatcher ascertained there were no registered men available. Then he would call out for anybody to take that job. If a man had been waiting in the background for that opportunity he would go up to the window, identify himself with his social security card, and in all probability would get the job.

Q. Are there any particular classifications in

(Testimony of F. C. Gregory.)

which a non-registered man may apply in the event a registered man is not available?

A. Well, I don't know whether I quite catch the import of your question, but——

Q. Let me withdraw that.

In what job classifications among longshoremen are vacancies that the dispatcher is not likely to be able to fill?

A. Well, the banana boats have always——

Q. First, can you give us the classification?

A. Well, there wouldn't be any particular classification, probably dock men that would be working on unpleasant cargo, because a gang, if a gang is assigned to a job it has to take it. The men dispatched out of the plug board to that job, as [513] long as there are men in the plug board, they are supposed to take it, although they can and do sometimes turn it down. But generally they take it regardless of whether it is a desirable job or not.

There is one notable exception which is the banana boats where there is hard labor of carrying bunches of bananas on the dock from the belt into the rail cars and carrying them from the belt on the dock to transfer it onto this other belt there that are not considered very desirable, and frequently registered men will not accept them even though they are available in the hall for dispatching. They have been allowed by the dispatchers to turn them down.

The banana jobs are frequently done almost ex-

(Testimony of F. C. Gregory.)

clusively by outsiders with the exception of the gang which discharges the ship.

Trial Examiner Rogosin: By "outsiders" you mean non-registered men?

The Witness: Non-registered men, yes, sir.

Q. (By Mr. Hilton): Can you give us any other instances where non-registered men are likely to have an opportunity to work on any particular type of ship?

A. Well, I would say that if work were at all brisk, there would not be any volunteers to work cement or bones or a few other categories of cargo that are considered unpleasant.

Now, the longshoremen, the registered men, you will [514] understand, are not required to answer to a dispatch call except at the dispatching hours between 6:30 and 8:30 in the morning. If a job comes in between then and night, if a registered man takes it it is purely on a volunteer basis. Many of those jobs are taken by non-registered men because the man doesn't want to take a short job, a one day job or something like that. And if the job is not particularly to his liking he will turn it down, and he can do it without in any way conflicting with the rules of the Labor Relations Committee.

Q. Would you say the practices that you have related are pretty common practices, or are they unusual? That is, with respect to the unloading of banana ships and the other undesirable cargo?

A. Well, normally there is one banana ship a week in. It is a day and a half to two days' job, and

(Testimony of F. C. Gregory.)

as I say, when the banana ships are coming in that is a regular occurrence.

The other is a regular occurrence, but it would depend upon the number of jobs that came in, the number of men that were wanted after dispatching hours were closed.

Q. On the banana ships approximately how many men are used to unload them?

A. About 200.

Q. Would you say that the majority, or could you tell us what percentage of the 200 would normally be non-registered men unloading the banana ship? [515]

Mr. Leonard: Before that question is answered may I interpose an objection on the ground this is not the best evidence. I think if Mr. Gregory were asked he would tell us that records are kept with respect to the number of men that work, what kind of cargo, what kind of ships and how many of them are registered men and how many are not, and if this is material—I doubt it very much—but if it is, I submit those records would be the best evidence and the testimony ought to be from the records and not from the witness' in effect guesses with respect to how many men are there and how many normally are registered and how many normally are not registered.

Trial Examiner Rogosin: Mr. Gregory, can you answer that from your own knowledge and recollection?

(Testimony of F. C. Gregory.)

The Witness: Well, I would have to say that the number of—

Trial Examiner Rogosin: An approximate figure?

The Witness: Yes, I could give you some figures but they would be variable figures because it depends upon how busy the port is and how much the men desire to work.

As to Mr. Leonard's statement, I do not believe there is any record either in the union office or our own office as to the number of men, casuals who have worked bananas, or the number of outsiders who have worked bananas or non-registered men, and the number of registered men. I do know from having had complaints from the company that does that work that at times more than 50% of the men are non-registered men. But [516] that would vary from ship to ship and from season to season in accordance with the business of the port.

Mr. Leonard: If there aren't any records and if the witness' testimony is based upon hearsay complaints I move then that it be stricken as of no evidentiary value.

The Witness: It is not based on hearsay.

Mr. Leonard: I am not arguing with the witness, I am directing the motion to the Trial Examiner based on the record to this point.

Trial Examiner Rogosin: I would like to hear further from the witness, first as to what he was about to say.

Mr. Hilton: I was going to clear that up, too.

(Testimony of F. C. Gregory.)

Trial Examiner Rogosin: I will reserve ruling on your motion until I get the rest of his answer.

Q. (By Mr. Hilton): As a member of the Labor Relations Committee, did you receive this information from the companies?

A. Yes, I received the information from the companies, and I have from time to time had an actual check made upon the number of registered men and the number of non-registered men who worked the docks.

As I stated, from those actual studies, I have found that up to 50% have been non-registered men. But that number is about a maximum, and it varies down to considerably smaller percentage.

Mr. Leonard: I move that the answer be stricken on the [517] ground it appears that the basis for the witness' answer is either hearsay or some reported studies which he has had made, neither of which sources of information is presently available to us. And the fact that they are not available to us, that is, in direct evidence instead of hearsay testimony, and the checks nor studies, neither being available to us, precludes us from cross-examining the witness on this point. [518]

Trial Examiner Rogosin: Were these studies and analyses made under your general supervision and direction?

The Witness: Yes.

Trial Examiner Rogosin: As part of your regular duties?

The Witness: Yes.

(Testimony of F. C. Gregory.)

Trial Examiner Rogosin: Objection overruled. The Motion to Strike is denied. The answer may stand.

While we have had this interruption, I heard you say or use the word "casuals." Do you use that interchangeably with the word "non-registered"?

The Witness: Interchangeably with "non-registered," yes.

Trial Examiner Rogosin: Is that the word in more common usage in the industry?

The Witness: That is correct. The Dispatchers and the union members of the Committee and the employers speak of non-registered men as "casuals." That is probably a loose use of the [519] word.

* * *

Q. (By Mr. Hilton): I will hand you what has been marked for identification as General Counsel's Exhibit No. 46 and ask you if you can identify that?

A. This is the form that is used by the San Francisco Longshore Labor Relations Committee for the receipt of applications from a visiting Longshoreman, that is, a man who is a union member but who is registered in another port and desires to work temporarily in San Francisco.

Q. How long has that form been in use?

A. This is a comparatively recent form. I believe it was [521] adopted in 1946. Up to that time a small mimeographed form was used which was not as complete.

Testimony of F. C. Gregory.)

Q. The exhibit shows or has a line rather, for whether or not the applicant is a member of the ILWU local; is that correct?

A. That was intended for the applicant to put in the local which he belonged to and the time. For instance, if he were a member of Local 13, San Pedro, that would be what he would fill in there.

Q. Then in the following line, "Cleared by Labor Relations Committee," that is the Port Labor Relations Committee for that port?

A. That is correct. [522]

* * *

Q. (By Mr. Hilton): Now, Mr. Gregory, I believe you testified as a member of—strike that.

Mr. Gregory, as Manager of the Waterfront Employers Association of California, do your duties include the handling of any labor relations involving Clerks? A. Yes, sir. [528]

Q. By that I mean Ship Clerks?

A. Ship Clerks, yes. [529]

* * *

Q. (By Mr. Hilton): Now, has the Joint Labor Relations Committee ever removed any Dispatchers? A. Yes, one.

Q. How long ago or when was it?

A. Well, I am not absolutely sure of the date, but I believe it was in 1938 or 1939. One Dispatcher was insubordinate. He absolutely refused to go along by the instructions of the Committee. He

(Testimony of F. C. Gregory.)

was called before the Committee, he verbally refused, and he was removed from office. [542]

* * *

Direct Examination

(Resumed)

By Mr. Hilton:

Q. Mr. Gregory, I believe yesterday at the conclusion of the hearing that you stated that the Dispatcher was selected by the Labor Relations Committee, that is, for the Ship Clerks, from the membership of the Union. Is that correct?

A. That is correct.

Q. Now, can you tell us how the Dispatcher receives requests for Clerks and how he dispatches those Clerks pursuant to the requests?

A. An employer has a man in his organization, a designated man or men in the Dock Agents Department, who determine the number of Clerks that are needed, the number of daily Clerks out of the hall that are needed, and merely telephone that order, giving the number of men and the description of the work that is to be done. The Dispatcher selects the men from the list which I described, who have the qualifications for that job and who have the lowest number of hours for that month.

Q. How does the Dispatcher notify the hourly or daily Clerks to report to this employer?

A. Well, the men are in the hall and the Dispatcher merely [551] calls them up and gives them the dispatch order to that particular company. It

(Testimony of F. C. Gregory.)

is very simple. The only complication would be that if a man were not present in the hall at the time the dispatch was given out, then the Dispatcher would make a notation on the list that he was not present, and he would be considered as refusing or not being available for the job—not refusing it, but not being available, and it would pass on to the next man.

Q. Does the Dispatcher have any regular hours for dispatching Ship Clerks?

A. Yes, there are regular dispatching hours for the Ship Clerks as well as for Longshoremen. They are stated in the agreement.

Q. What are the hours for dispatching Clerks?

A. I believe they are the same as the Longshoremen. If I may have a copy of the Clerk's Agreement——

Q. I will show you General Counsel's Exhibit No. 3.

A. On page 25 of this exhibit, San Francisco Hall is open 7:00 a.m. to 5:30 p.m.; dispatching hours, 7:30 a.m. to 8:30 a.m., 11:00 until noon, 4:00 p.m. till 5:00 p.m.

East Bay Hall, Oakland, 7:30 a.m. to 5:00 p.m.; 8:00 a.m. to 9:00 a.m., 11:00 a.m. to 12 noon—dispatching hours are 8:00 a.m. to 9:00 a.m., 11:00 till noon, and 4:00 to 5:00 p.m.

The same rules apply to orders that come in between for replacements or for an emergency job. If a man is in the hall he is given that job on volunteer basis between the dispatching [552]

(Testimony of F. C. Gregory.)

hours, and men are not required or penalized in any way for failure to accept a dispatch on that basis.

Q. Now, you state that the Dispatcher takes the men from the registration list. Is that correct?

A. Well, from this list, the list that I referred to is a list of the registered men or the registered permit men who come into the hall and register at the completion of a job. There are two different lists. The registration list is maintained by the Labor Relations Committee. It contains the names of all of the Clerks who are on an hourly basis. It does not contain the monthly Clerks, but all the Clerks on an hourly basis whether they are working regularly for a company or whether they are working out of the dispatching hall. That is a regular list which is only changed from time to time as a man is removed from the list or as another man is added to the list.

But this list which is kept by the Dispatchers is merely a register book which he has on his counter, and as a Clerk finishes one job he comes back to the hall and registers as available for another job. Then the Dispatcher places after his name the number of hours he has worked that month. Then from the men who are on that registered list, as orders come in, the Dispatcher picks the low man who is capable for the job and gives him the order, if that man is available in the hall at the time. [553]

Q. But only men whose names appear on the registration list as maintained by the Labor Rela-

(Testimony of F. C. Gregory.)

tions Committee are put on the list which the Dispatcher has?

A. Yes. They are the only ones who are eligible to sign this list.

Q. Now, you mentioned permit men. Are permit men on the register that is maintained by the Dispatcher?

A. Yes. The permit men are on there in a separate category.

Q. Can you explain that a little more—"the permit men are on there in a separate category"?

A. Due to the preference of employment clause, the Labor Relations Committee has ruled that as long as a fully registered Clerk is available for a job, then the permit men do not get any calls. That is in general carried out because the men themselves police the dispatching of men so that no permit men would go out when a fully registered man was in the hall.

Q. Do you know whether or not any separate list is maintained by the Dispatcher for permit men?

A. Yes. They are registered in a different place. The Dispatcher first goes to the fully registered men, and when that list is exhausted, then he goes to the permit list.

Q. In the event that the Dispatcher is unable to furnish a man with the qualifications necessary for the particular employer from either the register or fully registered Clerks, or the permit list, what does he do? [554]

(Testimony of F. C. Gregory.)

A. He gets a man from outside sources. There are a number of men around the Bay who are anxious to become Ship Clerks. They are generally recommended by a union member. The Dispatcher has their telephone number and gets in touch with them, or some of them actually come to the hall awaiting, if there is a busy time, the exhaustion of the registration list in order to pick up the job. Whenever we have a busy time there are considerable numbers of those men sent out, but only until there are men from the regular registration list or the permit registration list, become available.

Q. How are they dispatched to the employer by the Dispatcher?

A. They are dispatched in the same manner, after all the other men are exhausted, as the regular Clerks are; merely given a dispatching slip to fill out a job that an order has been placed for.

Q. Well, the slip that is given to this Clerk, who is neither fully registered nor a permit man, how long is that good for?

A. Well, it is supposed to be good for only one day, but there are times when the Clerk, when he is sent out, is told to stay on the job until it is finished. For instance, during the month of August when we had more than normal work on the front and there was quite a shortage of Clerks, there were Clerks who were sent out and were told to finish the job. The Dispatcher uses his discretion on that. If he believes that on the next day there will be regularly registered men [555] avail-

(Testimony of F. C. Gregory.)

able, he will dispatch the man only for one day and will so inform the company.

Q. Well, when you refer to "he," do you mean the Dispatcher?

A. The Dispatcher. He uses his discretion in that.

Q. You stated that during August, which was an unusual month, that a number of these non-registered Clerks were permitted to work quite some time on the job. Is that correct?

A. Yes.

Q. That was August of what year?

A. August of 1948.

Q. Does the non-registered Clerk, is he required to report back to the Dispatcher at any time?

A. No. He merely works as long as he is permitted to work by the employer and is discharged, as his job is finished, or he is laid off because a registered man is available. Then he does not need to go back to the dispatching office at all. He merely waits for his pay check. But he probably, if he is one of those who is desiring to get on steadily, he will contact the Dispatcher and tell him that he is now again available for work if any is available.

Q. Let us say that a Clerk who has never been employed as a Ship Clerk, desires employment. How would he go about getting employment as a Ship Clerk?

A. Well, I think that he would approach a member——

(Testimony of F. C. Gregory.)

Q. You say you "think." We want your best recollection and [556] knowledge on this.

Mr. Leonard: If he has any knowledge.

Mr. Hilton: If he has any.

A. I do have knowledge of certain cases. I do not have knowledge of all the cases where they are sent out.

A man goes to a member of the Ship Clerks Union and has him recommend the man to the Dispatcher, and then the man makes himself available at the dispatching hall, or gives his telephone number to the Dispatcher, indicating that he is willing to accept this work.

Q. (By Mr. Hilton): He is not put on any registration list?

A. No. He has no permanent status at all as a Ship Clerk.

Q. When does your Labor Relations Committee add new men to the list, and can you explain how they add new men to the registration list?

A. The Labor Relations Committee, if there is agreement that additional men are needed, will take up in a regular meeting the proposal that, we will say, 10 men be added to the list on the East Bay. Then, if there is agreement that those 10 men shall be added, the union proposes that 10 men who have acted as temporary Clerks on this non-registered basis, be added to the permit list. They are taken in as permit men. The men are added to the regular register, fully registered list, only when the men have been admitted to the union, and then every

(Testimony of F. C. Gregory.)

time a man has been admitted to the union, the union members of [557] the Labor Relations Committee, at the next meeting, inform the full Committee that certain individuals have been initiated and a note is made in the minutes that these men are now considered fully registered Clerks.

* * *

Q. (By Mr. Hilton): I believe you stated that taking the 10 men who are to be added to the list, you mentioned that the men [558] had to be added to the list on mutual consent, is that correct?

A. That is correct.

Q. What do you mean by "mutual consent"?

A. Well, it means that the Labor Relations Committee, in discussing the need for men, will reach agreement, full agreement. There has never been any reference by the Ship Clerks to the Arbitrator. We are fully aware of the need for Clerks because each month the Committee compiles the hours of work for each man, and we also have knowledge of the number of outside Clerks who are employed. So when it becomes evident that there is great need for additional clerks, it is proposed by one side or the other, generally the employers, that a certain number of men be added to the list. If agreement is reached then, first on the number of men, then that is the first agreement. Then the union proposes certain of the permit men, that certain of these temporary men be added to the permit list.

That is the way men are inducted into the industry at the present. [559]

(Testimony of F. C. Gregory.)

Q. But the mutual consent is the agreement of the employer representatives and the union representatives; is that correct?

A. That is correct.

Q. I believe you stated that these ten new men would go on the permit list; is that correct?

A. That is correct.

Q. Would ten men then from the permit list go onto the fully registered list, or what would happen there, if anything?

A. Not necessarily. There is no connection between the two. The industry would be furnished with these additional ten men on a permit basis, either—but they would be on the permit basis. The addition of the men to the regular registered list would depend entirely upon whether or not the union inducted these men into the union and informed the Labor Relations Committee that they had been admitted to the union, at which time there has never been any question but they would be transferred over from the permit list to the regular registration list. [560]

* * *

Q. (By Mr. Hilton): During your time as a member of the Port Labor Relations Committee have you yourself ever recommended or suggested that a new man be added to the list, that is, a man of your own choosing? A. We did.

Q. I say, "you." I am speaking of you yourself, personally.

A. Yes. I have suggested from time to time

(Testimony of F. C. Gregory.)

names, generally of men who have been turned down by the Joint Committee. In one or two cases they have been taken on because there was no objection to them.

Q. How about other employer members of the Labor Relations Committee? Have they made suggestions or requests that men of their own choosing be placed on the list?

A. I do not recall any such case.

Q. As a general practice and normally who suggested the additions to the registration list?

A. The union members of the Committee.

Q. Mr. Gregory, are there any times when a fully registered man, that is, a ship's clerk, is not permitted to go on job [563] assignments?

A. There have been.

Mr. Leonard: I object to that question as incompetent, irrelevant, immaterial. I think it is pretty unintelligible.

Trial Examiner Rogosin: I don't quite follow it myself.

Mr. Hilton: I will withdraw it.

Q. (By Mr. Hilton): Mr. Gregory, are there any circumstances under which the dispatcher will refuse to permit a fully registered man, a daily clerk, to go out upon a job when a job is available?

A. Yes.

Mr. Leonard: Just a minute. It has been testified there are many such circumstances. If there are other people who have more hours than he has; if the man isn't qualified for the job.

The question is clearly ambiguous.

(Testimony of F. C. Gregory.)

Mr. Hilton: I think it is up to the witness to determine whether it is ambiguous or not.

Trial Examiner Rogosin: As a matter of fact, with the qualifications that have been indicated by Mr. Leonard——

Mr. Hilton: Yes, and he might have a broken leg, too, and he couldn't go out. I mean, we are acting sensibly in this.

Do you understand the question, Mr. Gregory?

The Witness: I understand it, I believe, sir.

There are occasions, fairly numerous, where men who would otherwise be up for dispatching due to their hours and the fact [564] that they were on the registration book and ready for work and so forth were not permitted to go out on a job.

* * *

The Witness: The occasion for the refusal to send men out occurs, number one, when the Labor Relations Committee in the exercise of its powers has suspended a man. Those are not frequent. [565]

* * *

The Witness: The second group is the case where the union itself in following out its own rules has suspended the man from work for from one day to as much as thirty days.

The third case which is fairly infrequent is where the union has decided to deny the man any opportunity to work. During 1948 there is one case where the man was refused work for a considerable period

(Testimony of F. C. Gregory.)

of time. He actually appealed to the Labor Relations Board to try to get reinstated.

Q. (By Mr. Hilton): What, if anything, did the Labor Relations Committee do with respect to that individual?

A. Well, the Labor Relations Committee was unable to agree upon any disposition of his case.

Q. What eventually happened to the man?

A. Well, the man isn't working.

Mr. Leonard: Nobody is.

The Witness: And was not working up to September 2nd.

Q. (By Mr. Hilton): When the strike was declared? A. Yes.

Q. Now, Mr. Gregory, are you familiar with the hiring practices prevailing in the other ports, that is Los Angeles and Portland?

A. I am in a general way. I haven't been in their hiring halls for—well, since along in 1943 or '44. But I know in general their hiring practices from direct observation. I do [566] not believe they have changed significantly since that time.

Mr. Leonard: I move the last sentence of the witness' answer be stricken as opinion and conclusion.

Trial Examiner Rogosin: Motion denied.

Q. By Mr. Hilton): I will show you what is in evidence as General Counsel Exhibit No. 4 which is the agreement between the Waterfront Employers Association of California and the Marine Clerks Association, Local 1-63 of the ILWU, cover-

(Testimony of F. C. Gregory.)

ing the ship clerks in the Los Angeles-Long Beach Harbor. Is that correct? A. That is correct.

Q. Are you familiar with that agreement?

A. Yes.

Q. Directing your attention to Page 4 of the exhibit, Paragraph 8 (b) (2), Paragraph 8 provides for the establishment of a Labor Relations Committee. Is that correct? A. Yes, sir.

Q. And sub-paragraph (b) (2) provides for the establishment and supervision by the Labor Relations Committee of the dispatching hall?

A. That's right.

Q. The expenses of which shall be borne equally by the union and the Employers Association?

A. Yes, sir. [567]

* * *

Q. Do you know whether or not there is any hiring hall established and maintained in Portland?

A. There is a physical hiring hall in [576] Portland.

* * *

Q. (By Mr. Hilton): One question. Approximately how many clerks are registered in San Francisco?

A. There are around 700 registered daily clerks, and there are about 220 monthly clerks.

Q. Approximately how many clerks are registered in the Los Angeles-Long Beach area? [579]

A. There are about 400. [580]

* * *

(Testimony of F. C. Gregory.)

Q. (By Mr. Hilton): All right now, tell us the discussion at the meeting of April 28.

A. Well, there was a discussion of the Employers' demands for modifications and a general rejection of those demands by the union. That was the sum total of the meeting.

Q. What demands were the Employers' Association making upon the union? What changes did they want?

A. Well, in the first place there was the preference of employment clause which we wished to delete. In the second place, there was the matter of certain supervisory employees whom we did not consider should be a part of the bargaining unit but should be excluded from it under the definition in the Labor Management Act. Those were it. [586]

Then there was the matter of the Dispatcher whom we desired to be neutral rather than appointed as at present as a member of the union.

Q. Was any discussion had on these subjects you just mentioned?

A. There was limited discussion, but principally it was just a statement by the union they could not accept them.

Q. What was the conclusion of the meeting?

A. Well, the meeting concluded on the basis that nothing was accomplished at that meeting, but that the whole matter would be subject to further negotiation after agreement had been reached on the Longshore items, two of which were similar to

(Testimony of F. C. Gregory.)

these: the matter of preference of employment, and the matter of the Dispatcher. [587]

* * *

Cross-Examination

By Mr. Leonard: [614]

* * *

Q. If I understood your testimony a minute or two ago, Mr. Gregory, between the period of the Arbitrator's Award in 1934 and the execution of the 1937 contract, which for the first time contained a preference of employment clause, in [677] that first period no consideration was given to membership or non-membership in the union?

A. There was no difference made as far as the employers were concerned. The union did object to men who were non-union and it was only after being pressed that the Award required the registration of these men originally, that the union consented to register them.

After the first registration was closed then they definitely objected to anyone that they did not consider a good union man coming in. [678]

* * *

Q. And from 1937 to the present time, because of the preference of employment clause which has been in the contracts, which is in the latest contract, Section 6 in General Counsel's Exhibit No. 3, why you have been informed by the union from time to time which longshoremen were its members?

(Testimony of F. C. Gregory.)

A. Yes. When a permit man was initiated we were informed and we changed our records, the Joint Committee records, to show that he was a fully registered longshoreman.

Q. And as such he was then entitled to preference of employment over permit members?

A. That is correct.

Q. And his entitlement, if I can use the word, to preference of employment flowed from the preference clause which is Section 6 of the contract?

A. That is right. [682]

* * *

Cross-Examination

(Resumed)

By Mr. Leonard: [722]

* * *

Mr. Holmes (Interposing): What meeting was this, first?

Trial Examiner Rogosin: The April 28th meeting. [763]

* * *

Q. (By Mr. Leonard): Well, do you have any recollection at all, Mr. Gregory, as to whether preference was discussed, or whether the discussion was limited to matters that you just mentioned?

A. No, I am quite sure that preference of employment was discussed briefly, but I have no recollection that there was any statement by the union that the International favored the removal of that from the contract, or anything like that. As I re-

(Testimony of F. C. Gregory.)

call the thing, it was more or less a minor issue at the time.

Q. With respect to the matter of the selection of the dispatcher, that was one of the major issues?

A. That was.

Q. And do you recollect what the position of the representatives of the union on that issue was?

A. It is my distinct recollection that they gave the same reply there that had been given earlier to the Longshore [767] Negotiating Committee, that it was the position of the union's attorneys that the present, or the provision that was presently in the contract at that time was legal and therefore did not need to be changed, and they were against any change. [768]

* * *

RUSSELL E. FERGUSON

a witness called by and on behalf of the General Counsel, National Labor Relations Board, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hilton: [945]

* * *

Q. What is your occupation?

A. I am Manager of the Waterfront Employers of Oregon. [946]

* * *

(Testimony of Russell E. Ferguson.)

Recross-Examination
(Resumed)

By Mr. Leonard: [1028]

* * *

Q. Approximately how many clerks did you have on the registered list prior to the strike of September 2nd, 1948?

A. I think it was around 240, including all the categories.

* * *

Q. (By Mr. Hilton): Do you know whether or not the registered [1060] clerks are members of the union?

* * *

A. Yes, sir.

Q. (By Mr. Hilton): How do you know that?

A. The union has told us many times.

Q. Well, you say the union has told you?

A. The union officials and the union Labor Relations Committee members have told us many times here are no——

* * *

The Witness: There are no checkers or superargoes or supervisors working in the Oregon area that are not members of the union. [1061]

* * *

Q. (By Mr. Hilton): How about the casuals, do you know whether or not they are members of the union?

(Testimony of Russell E. Ferguson.)

A. No, the casuals are not members of the union.

Q. Now, how do you know that?

A. When the men are registered, a request made for registration by the union, they must be union members before they are presented to our Committee by the Union Labor Relations Committee. They have told us that. [1062]

* * *

Redirect Examination

By Mr. Holmes:

Q. Do you know whether the union imposed any other conditions at the time of registration in addition to the matter of competency? [1132]

* * *

The Witness: Yes. I know that union membership is required.

Mr. Holmes: That's all.

Recross-Examination

By Mr. Leonard:

Q. How do you know that?

A. I have been told so by officials of the union and the union members of the Labor Relations Committee.

Q. By which officials of the union?

A. Business agent, secretary.

Q. Name, please? A. Mr. Harry Rice.

Mr. Holmes: What is his position?

The Witness: I am not so sure that Harry Rice

(Testimony of Russell E. Ferguson.)

told me. Mr. Wally Hanks told me, the business agent before Rice.

Q. (By Mr. Leonard): When did Hanks tell you this?

A. A couple of years ago I do know.

Q. Some time in 1946? A. That's right.

Q. Anybody else ever tell you this?

A. Yes, a lot of them did.

Q. Name, please?

A. No, I don't think I'll give you any [1133] names.

Q. I didn't ask you whether you would or not; I asked you for the names of those who told you.

A. Well, I have talked to a lot of union checkers and they've all told me this.

Q. What have they told you?

A. That no man is going to be registered as a checker unless he belongs to the union.

Q. Now, these are checkers that you talked to, not union officials?

A. In addition to the union officials.

Q. Well, tell me the names of the union officials that you talked to with respect to this matter.

A. Mr. R. J. Wolf.

Q. When did you talk to Wolf?

A. Certainly within the last couple of years.

Q. Where? A. Where?

Q. Yes.

A. In my office in Portland. [1134]

ELLISON EBEY

a witness called by and on behalf of the General Counsel, National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hilton:

* * *

Q. What is your occupation?

A. Assistant Manager of the California Stevedore and Ballast Company.

Q. And where is the California Stevedore and Ballast Company located?

A. 311 California Street.

Q. Do you know whether or not the company is a member of the Waterfront Employers Association of the Pacific Coast? A. It is. [1272]

* * *

Q. (By Mr. Hilton): Now, do you know where the ships to be unloaded, where they come from?

A. I do.

Q. Where, please?

A. Well, we have lines running from here to the Orient, we have lines running from here to the South Pacific, we have lines running from here to Australia, we have intercoastal, and we [1275] have European.

Q. Now, since September the 2nd, 1948, have you loaded or unloaded any cargo on the ships?

(Testimony of Ellison Ebey.)

A. We have discharged a little mail and baggage off one Norwegian ship from the Orient.

Mr. Hilton: That is all.

Cross-Examination

By Mr. Leonard: [1276]

* * *

Q. Have you had any contracts to unload any other ships since September 2nd?

A. Well, we have all our contracts in force right today, but we have not placed any orders.

* * *

Q. (By Mr. Leonard): Why haven't you placed any orders since September 2nd?

A. There is a strike.

Q. And how did you know that there is a strike?

A. Well, I was informed of it by many different ways, by the men, by the Waterfront Employers, by my "tops," and by the newspapers.

Q. Well, now, by "the men," do you mean some of your employees?

A. Some of the working longshoremen.

Q. Yes. Now, did any of the regular longshoremen tell you not to place orders?

A. I would like to make one correction. We ordered the men we had working back—the daily gangs had finished on the 1st—we ordered them back to work, to come back to work on the 2nd. I understood that there was a stop-work meeting on the 2nd. We ordered them, if they didn't come back on the 2nd, to come back on the 3rd, the night

(Testimony of Ellison Ebey.)

gangs the same way. None of the men came back on any of those orders. [1278]

* * *

A. E. STOW

a witness called by and on behalf of the General Counsel, National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hilton:

* * *

Q. And what is your occupation, please?

A. Pacific Operating Manager for American-Hawaiian Steamship Company. [1332]

* * *

Q. (By Mr. Hilton): Is the American-Hawaiian Steamship Company a member of the Water-front Employers Association? A. Yes.

* * *

Cross-Examination

By Mr. Leonard:

Q. Has the American-Hawaiian Steamship Company operated any of its vessels on the Pacific Coast since September 2nd, 1948? A. Yes.

Q. Which ones?

A. None intercoastal. Some of the off-shore vessels are still coming in. If you want them by name I will have to phone down and get a schedule. [1336]

Q. No, that is quite all right. Then in answer

(Testimony of A. E. Stow.)

to my previous question, when you said the company was operating, or had operated vessels since September 2nd, 1948, you meant vessels which on that date were on the high seas, were still coming into port?

A. Yes. I consider them under operation.

Q. Yes. Have any vessels since that date, vessels operated by the company, been loaded and sent out on a new voyage since September 2nd, 1948?

A. No.

Q. Does that include the vessels which are under commitment to the Army and the Navy?

A. Yes, sir. [1337]

* * *

HENRY W. CLARK

a witness recalled by and on behalf of the General Counsel, National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hilton:

* * *

Q. Mr. Clark, I believe you have testified that you are Vice President and General Manager of the Waterfront Employers Association of the Pacific Coast?

A. That is correct. [1756]

* * *

[Clerk's note: In a portion of the testimony of Henry W. Clark not designated for printing, the following exhibit was introduced in evidence.]

(Testimony of Henry W. Clark.)

GENERAL COUNSEL'S EXHIBIT No. 55

Employers Memorandum Given to Union
for Meeting, August 28, 1948, 2:30 P.M.

1. We have indicated the willingness of the employers to follow, in substance, the proposal made by you on March 24, 1948, to continue the present provisions of the contract concerning dispatching halls and preference of employment provisions, subject to the stipulation that, in the event of a legally binding decision of any court on this issue, the whole subject shall be subject to renegotiation at the request of either party.

2. The employers, as we have already advised you, are prepared to continue the status quo on coverage of contracts, except on the employers' proposal to exclude supercargoes.

3. As to vacations, we propose increasing the allowance so that it will consist of 5c per hour straight time and 7½ per hour overtime, crediting each longshoreman for each pay-roll hour of employment, to be accumulated in a vacation fund and paid to him when he takes his vacation, under rules established by the Labor Relations committee; or, if you prefer, the employers offer to renew the present vacation provisions.

4. As to limitations on hours of work, the employers offer to amend the existing agreement by adopting the provisions contained in the letter to

(Testimony of Henry W. Clark.)

you dated August 10, 1948, restricting work to nine hours, subject to the exceptions therein stated; and providing a limitation of 1,000 hours in any period of 26 consecutive work weeks under the terms set forth in our letter.

5. The employers propose to increase the basic wage rate of pay for longshore work, set forth in Section 3(a) of the agreement, to the extent of 12c per hour, with 12c added to each of the overtime rates specified in said Section 3.

6. The employers propose that each registered longshoreman shall be given a stated day off each week, to be scheduled by the local Labor Relations Committee, such date, however, not to be fixed on Sunday alone.

7. We propose that the present grievance machinery and arbitration provisions of the contract be continued, but the employers are willing to make an effort to agree with you in advance upon a mutually acceptable Coast arbitrator.

8. We propose to add to the agreement a provision that no person shall be dispatched through any of said halls to employers which are not members of an employer association party hereto, except on the written consent of the employers.

9. The employers propose reasonable restrictions on business agents.

With the foregoing amendments, we propose to renew the existing contract for a period ending

(Testimony of Henry W. Clark.)

June 15, 1950, but reserving to either party the right to re-open the subject of wage rates only be notice in writing, given at least 60 days prior to June 15, 1949; and with the provision that if the parties are unable to agree thereon, on or prior to June 15, 1949, either party may cancel; no other wage review provisions to be incorporated in the agreement.

Admitted September 29, 1948.

[Clerk's note: In a portion of the testimony of Henry W. Clark not designated for printing, the following exhibit was introduced in evidence.]

GENERAL COUNSEL'S EXHIBIT No. 60

Waterfront Employers Association
of the Pacific Coast
16 California Street
Phone DOuglas 2-7973
San Francisco 11, Cal.

August 30, 1948

Mr. H. R. Bridges, President,
International Longshoremen's &
Warehousemen's Union,
150 Golden Gate Avenue,
San Francisco 2, California.

Dear Sir:

In a last effort to arrive at an agreement of contract with your Union and avert a strike, the

(Testimony of Henry W. Clark.)

General Counsel's Exhibit No. 60—(Continued)

Waterfront Employers present the following proposals:

1. On the subject of hiring halls, preference of employment, and union security provisions, we have offered:

a. To continue the contract as is; and if you wish, add a provision that in the event the hiring and preference clauses are suspended in any way as a result of legal action, this agreement shall terminate.

b. To adopt a proposal similar to the language appearing in your letter of March 24, 1948, as follows:

In the event of a legally binding decision by the courts holding there is a legal conflict between the contract and the law, the subject shall be subject to renegotiation at the request of either party.

c. To adopt a modified proposal as a result of our discussions to protect the position of your Union in the event clauses on these subjects are held unlawful or illegal. That proposal is attached and is in a large measure your own language of a substitute for preference of employment appearing in Section 6 of the agreement.

2. On the subject of arbitration, we propose continuance of the present machinery of the agreement, but with the following changes:

“The parties shall endeavor to agree upon

(Testimony of Henry W. Clark.)

General Counsel's Exhibit No. 60—(Continued)

an arbitrator to serve for the term of the agreement before it is executed but in the event they are unable to agree, procedure now provided in the contract for the selection of an arbitrator shall be followed.

“Section 10(f) shall be deleted from the agreement and, in lieu thereof, shall be substituted the following:

“All decisions of the arbitrator shall be limited to the express provisions of this agreement, and shall be final and binding upon the parties hereto, and shall be in writing, and a copy shall be submitted to each of the parties hereto.’ ”

3. On the subject of vacations we have proposed to increase the vacation allowances by accumulating 5c per hour straight time and 7½c per hour overtime, crediting each longshoreman for each payroll hour of employment, to be accumulated in a vacation fund and paid to him when he takes his vacation, under rules established by the Labor Relations Committee; or, if you prefer, the employers offer to renew the present vacation provisions.

4. On the subject of wages, we now make an offer of 10c per hour straight time, and 15c per hour overtime.

5. On the subject of hours, we have proposed the following:

“No employee shall be required to work in ex-

(Testimony of Henry W. Clark.)

General Counsel's Exhibit No. 60—(Continued)

cess of 9 hours in any one day, exclusive of travel time; provided, however, that this provision shall not apply in the event relief men or gangs are not available at the expiration of said 9 hours of work and provided further that an employee may be required to work more than 9 hours to finish the job or the ship.

“No longshoreman shall be employed and no longshoreman shall work more than 1000 hours during any period of 26 consecutive work weeks, the first of such periods to begin with the Monday following the execution of this agreement. Any time worked, whether as a longshoreman or as a car-loader, dockworker, or other category of employee, for any employer party to this agreement shall be considered time worked for the purposes of this paragraph. Paid travel time likewise shall be considered time worked for the purposes of this paragraph. If by amendment to Section 7 of the Fair Labor Standards Act or other legislation, or by Supreme Court decision, the obligations and rights of the parties to this agreement with respect to overtime under the Fair Labor Standards Act should be altered, then either party may on 60 days notice reopen the provisions of this paragraph and in the event that they cannot agree, the matter shall be submitted at the request of either party to the grievance procedure and arbitration under the terms of this agreement. This agreement is made subject to obtaining the certification re-

(Testimony of Henry W. Clark.)

General Counsel's Exhibit No. 60—(Continued)
quired by Section 7 (b)(1) of the Fair Labor Standards Act. No longshoreman shall work more than 40 hours in the work week for a single employer if relief is provided; but when relief is not provided, such longshoreman shall continue to work as required."

Each registered longshoreman shall be given a stated day off each week, to be scheduled by each local labor relations committee, such day off not to be Sunday necessarily.

6. On the term of the contract, we have acceded to your demand of June 15 termination date, and agreed to your proposal that the contract may run until June 15, 1950, with the understanding, however, that the wages established by contract will continue until June 15, 1949, with the right of either party to then open the subject of wages on notice given at least 60 days prior to June 15, 1949, and providing that if the parties are unable to agree on or before June 15, 1949, the agreement will terminate. (This would of course mean deletion of the wage review provision of the contract.)

7. Subsistence—

We have overlooked in our discussion the willingness of the employers to increase subsistence rates to \$2.25 per night for lodging and \$1.25 per meal.

The foregoing represents, in our opinion a most earnest effort of the employers to meet the demands which the Union has presented to them; it repre-

(Testimony of Henry W. Clark.)

General Counsel's Exhibit No. 60—(Continued)
sents, in several respects, substantial benefits in addition to those contained in the offer submitted to the Board of Inquiry and, in more instances than one, proposals made on behalf of the Union at one time or another.

All the employers are asking in turn is that you provide by contract reassurance that no person shall be dispatched through any of the hiring halls to employers who are not members of the employer association, except with its written consent, since it is the association which contributes to the support of the hiring halls, and reasonable restrictions on the activities of business agents.

In pursuance of discussions had today, the employers offer to continue the present provisions of the Coast Longshore Agreement relating to registration, hiring halls and preference with the following provisions:

1. No change in Sections 4, 5, 6, 8, and 10 relating to the hiring, dispatching and preference of employment to Union members, except that there will be inserted in the contracts:

1. In the event of a legally binding decision by court decision, which holds that any of the provisions of this agreement are not in conformity with the provisions of the Labor Management Relations Act of 1947 or, in the event of any court decision which prevents the parties from carrying out the

(Testimony of Henry W. Clark.)

General Counsel's Exhibit No. 60—(Continued)
provisions of this agreement, then either party may give 60 days written notice of its desire to amend this agreement and, in the event that the parties are unable to agree upon amendment or continuance of this contract within said period of 60 days, this agreement shall terminate.

2. Section 6 of the agreement shall be amended to read as follows:

(a) Preference of employment shall be given to registered longshoremen, now registered and working in the industry.

(b) Preference in registering new men in the industry shall be given to men formerly employed in the industry as registered longshoremen or registered permit men, where it is shown that such men were not dropped from the industry for good cause, or for reasons other than lack of employment.

(c) In the event that it becomes necessary for the parties to reduce the number of registered men, due to lack of employment, such reduction to be made on a seniority basis.

There shall be no change in the present provision of the contract for the equalization of work opportunities.

3. The employers are willing to delete the first two paragraphs of Section 11(e) of the agreement. but are unwilling to delete the power of the Labor

(Testimony of Henry W. Clark.)

General Counsel's Exhibit No. 60—(Continued)
Relations Committee to discipline individual long-shoremen.

Very truly yours,

F. P. FOISIE,
President.

Admitted September 27, 1948.

Q. (By Mr. Hilton): Now I will hand you what has been marked for identification as General Counsel's Exhibit No. 62 and ask you if you can identify that, Mr. Clark?

A. (Examining document): Yes, this was a letter from the ILWU to the Waterfront Employers dated August 31, and received by the Employers, I believe, that night or the next morning, it was after the negotiating meeting on the 31st, the Board meeting on the 31st. [1805]

* * *

Trial Examiner Rogosin: General Counsel's Exhibit 62 for identification may be received and so marked.

(The document heretofore marked General Counsel's Exhibit No. 62 for identification, was received in evidence.)

(Testimony of Henry W. Clark.)

GENERAL COUNSEL'S EXHIBIT No. 62

International Longshoremen's & Warehousemen's
Union

150 Golden Gate Avenue
San Francisco 2, California

August 31, 1948.

Waterfront Employers Association of the Pacific
Coast,

16 California Street,
San Francisco, California.

Gentlemen:

The Union offers the following proposals:

- (1) Hiring hall registration and preference.
 - a. Continue present provision as is.
 - b. The Waterfront Employers Association to send covering letter to the union stating that if hiring, dispatching and preference provisions are suspended in any way as a result of legal action or injunction proceedings, whether or not such proceedings are initiated by the employers, this agreement shall terminate and it is understood and agreed by the parties that any notices concerning termination of the agreement are waived.

- (2) Wages.

Increase basic straight time wage 13 cents per hour retroactive to June 15, 1948.

(Testimony of Henry W. Clark.)

(3) Wage review.

Contract to run to June, 1950, leaving wage review clause as is.

(4) Discipline and penalties.

Leave Section 11 (e) as is. Re-write Section 11 (b) as follows: Longshoremen shall perform work in accordance with the provisions of this agreement. No employer may order any employee to perform work in any way contrary to the provisions of this agreement or shall change conditions of work and order longshoremen to continue working under such changed conditions pending arbitration. No longshoreman shall be required to work when in good faith he believes that to do so is to endanger health and safety.

Re-write section 11 (i) as follows: Whenever a gang member is dispatched to a job and accepts the job dispatched to and fails to report to the job after such dispatch without sufficient notice to the Dispatcher to permit a replacement he shall be subject to discipline as provided in section 11 (e).

(5) Nine-hour shift.

We propose that the maximum stretch of work be limited to 9 hours, exclusive of travel time with a two-hour leeway to finish the ship when sailing and provided such 9-hour shift starts no earlier than 8:00 a.m.

(Testimony of Henry W. Clark.)

(6) Sunday off.

We propose that this union demand be set aside for the time being until our committee sees what progress can be made on other existing strike demands.

(7) Four-hour minimum.

We propose that the present contract provision for a minimum pay guarantee of 4 hours be extended to include all shifts which start on overtime hours.

(8) Subsistence.

We accept your proposals for the subsistence increase from \$5.00 to \$6.00 a day providing, however, that where higher rates for subsistence are now being paid, they shall not be reduced.

(9) Vacations, arbitration proceedings, arbitration awards, statutory overtime provisions.

We again propose that these questions be left for further study and negotiation in view of the time element with the understanding that there shall be no stoppage of work because of them and because the union believes that there is an area of agreement between the parties on these issues.

(10) The union still has several minor or fringe issues which it suggests either be left to further

(Testimony of Henry W. Clark.)

negotiation and arbitration or be gone over by the parties in the present negotiations.

Very truly yours,

/s/ HARRY BRIDGES,
HARRY BRIDGES,
President.

HB:hk

uopwa-34-cio

Admitted September 29, 1948.

Q. (By Mr. Hilton): Now, was there any discussion on the letter, General Counsel's Exhibit No. 62?

A. We stated to the union that it was unacceptable to us.

Q. Directing your attention to Paragraph 1(b), was there any discussion on that provision, which refers to the hiring hall provision?

A. Yes. We stated that we could not agree to any legal action [1806] or injunction proceedings because this did not cover the unfair labor proceedings that were already under way. It also covered immediate termination, which we did not feel would hold up under the law.

Q. Well, calling your attention to the provision "Refers to the Waterfront Employers Association sending a covering letter to the union——" [1807]

(Testimony of Henry W. Clark.)

A. There was considerable discussion, the union asking protection to itself as regards the hiring hall be put in a covering letter, and the employers maintaining the position that it should be in the contract itself. There was a lot of talk back and forth on this. The employers said that they had had previous experiences with covering letters where they were not able to enforce them in the same degree as a contract and for that reason they wanted it in the contract.

Bridges maintained the position that he wanted it in a covering letter, and the employers said "Would this covering letter be approved by the men?"

Bridges said it would be. [1809]

* * *

Q. Now, was any work performed along the Waterfront on September 2, 1948?

A. None, except removal of baggage and mail from ships that were coming in and discharging, as far as I know.

Q. Were there any pickets along the Waterfront?

A. Pickets appeared on the Waterfront after 10:30 on September 2, but I don't just know what time. I think it was about noon on the 2nd.

Q. Have you seen the pickets along the Waterfront yourself? A. Yes. [1828]

* * *

(Testimony of Henry W. Clark.)

Q. (By Mr. Hilton): Mr. Clark, have any longshoremen been working along the waterfront since September 2, 1948?

A. As I stated before, longshoremen have been working discharging mail and baggage on passenger ships, and there have been some longshoremen working on Civil Service here for the Army and through two other stevedoring companies.

Q. Are these other stevedoring companies members of the Waterfront Employers Association?

A. They are not.

Q. Are any longshoremen working for any members of the Waterfront Employers Association on the loading or unloading of cargo [1837] other than mail and baggage?

A. No, sir.

Q. Have any ships been sailing since the 2nd of December, 1948?

A. No.

Q. September 2nd, 1948?

A. September.

Q. Well, I believe it is a fact that one ship did leave here, isn't that correct?

A. Oh, I think there was one, yes. I was not in the city when that left. [1838]

* * *

LINCOLN FAIRLEY

a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Leonard:

* * *

Q. And what is your employment?

A. I am the Research Director for the International Longshoremen's and Warehousemen's [2059] Union.

* * *

Q. (By Mr. Leonard): I show you what has been marked Respondents' Exhibit No. 17 for identification and ask you to examine that, please, and state what it is if you can.

A. This is a copy of the Award of the International Longshoremen's Board dated October 12, 1934. That was the award which concluded the 1934 strike so far as the longshoremen are concerned, and set the pattern for the contract between the parties.

Q. You say that the Award concluded the strike. The strike itself in 1934 concluded at some date earlier than October, didn't it?

A. Yes, it concluded in July. They went back pending this Award.

Q. There was a Board appointed by the President, is that right, at the termination of the strike in July of 1934?

A. Well, the Board had been appointed prior

(Testimony of Lincoln Fairley.)

to the termination of the strike, and acted as a mediating body, and an agreement was reached the 7th of August between the parties on the basis of which the full hearings were held and this Award was subsequently issued in October.

Q. There were hearings by this Board appointed by the President and on the basis of the evidence which the Board took at those hearings, it then issued this Award?

A. The hearings were in all the major ports, very voluminous transcript.

Q. And the Award was handed down in October, as you say, that [2060] was the original basic Award. From then on the contract, as a matter of fact, indicates there are some amendments to that Award?

A. That's right. The preamble to the present or the former contract specifies the award of October 12, 1934, and refers to subsequent amendments by arbitrators. [2061]

* * *

Trial Examiner Rogosin: As I read the Complaint, Mr. Holmes, and I direct the question to you because I think you are in a better position to answer it, there is an allegation of a continuing refusal to bargain, I assume, up to the present time. What would you say with respect to the position of the employers that they will not bargain with the union unless and until the union complies with the provisions of Sections 9(f) (g) and

(h) of the Amended Act, a position which was asserted for the first time, as I recall, in the bargaining negotiations on September 1st or thereabouts. [2299]

* * *

Trial Examiner Rogosin: Do I understand your position to be, Mr. Holmes, that the employers are prepared to bargain with the union as of this date even in the absence of filing of the affidavits and statements required under Sections 9(f) (g) and (h)?

Mr. Holmes: That's correct. [2300]

* * *

Trial Examiner Rogosin: The hearing will be in order.

This is a reopened hearing pursuant to an order entered by the Trial Examiner on March 9, 1949, in the matter of International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, and Waterfront Employers Association of the Pacific Coast, Case No. 20-CB-19, and International Longshoremen's and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local 1-63 and Local 1-40, each affiliated with International Longshoremen's and Warehousemen's Union, C.I.O., and Waterfront Employers Association of the Pacific Coast, Case No. 20-CB-38.

The appearances already entered in the original proceedings I assume are the same here, and as I

understand it there are no appearances to be entered at this time, is that correct?

Mr. Hilton: Yes, sir, that is correct. [2399]

* * *

Mr. Hilton: As General Counsel's Exhibit No. 1-p, the Motion of the General Counsel for Leave to Amend the Complaint and Amendment, together with an attachment, a letter dated December 17, 1948, which is signed by representatives of the Waterfront Employers Association and representatives of the International Longshoremen's and Warehousemen's Union, and in turn attached to the letter an agreement covering the longshoremen.

I might also state at this time that copies of the Motion for Leave to Reopen the Record and the Motion for Leave to Amend the Complaint and the Amendment and attachment were served on counsel for the charging party, Waterfront Employers Association, and on counsel for the Union, Mr. Leonard. They [2400] were sent by registered mail, United States Mail, return receipt requested. I did not bring the receipt with me, nor do I have an affidavit of service, but I assume there is no question but the motions were received by the parties; is that correct?

Mr. Holmes: Correct.

Mr. Leonard: That is correct. I was just trying to find the date. I don't find it here, but they were received in the ordinary course of the mail shortly after the dates they bear. [2401]

* * *

Mr. Hilton: As General Counsel's Exhibit No.

1-u, the Answer to Amendment to Complaint filed on behalf of the Respondents. [2402]

* * *

Trial Examiner Rogosin: Inasmuch as General Counsel's Exhibits 1(o) to 1(u), inclusive, have already been filed with the formal papers, that is prior to the reconvening of this hearing, and have in effect been granted, I shall permit them to be marked and received in evidence as General Counsel's Exhibits 1(o) to 1(u), inclusive. To that extent your objection is overruled. [2405]

* * *

Mr. Hilton: If the Examiner please, I should like to offer in evidence as General Counsel's Exhibit No. 72 the Agreement dated December 17, 1948, between the International Longshoremen's and Warehousemen's Union and the Waterfront Employers Association of the Pacific Coast, which is commonly known and referred to as the Coast Longshore Agreement. Mr. Holmes has submitted copies, mimeographed copies of the Agreement to me, which contains the typed signatures of three representatives of the Waterfront Employers Association, and three printed signatures of representatives of the International Longshoremen's and Warehousemen's Union. It is my understanding that the copy is a true and correct copy of the original agreement which was executed between the parties, and that this agreement was initialed by each of the representatives of the International Longshoremen's and Warehousemen's Union and

the Waterfront Employers Association, that is, Section by Section, it was initialed as it was agreed upon in the original agreement, and that the face sheet on General Counsel's Exhibit No. 72 containing the typed signatures, the original was in fact signed by each of the representatives of the [2449] respective organizations on December 17, they actually signed this agreement. [2450]

* * *

Trial Examiner Rogosin: General Counsel's Exhibit 72 for identification may be received and so marked subject to the comments of counsel, and your right to check against the originals.

* * *

(The document heretofore marked General Counsel's Exhibit No. 72 for identification was received in evidence.) [2451]

GENERAL COUNSEL'S EXHIBIT No. 72

Agreement

This Agreement, dated December 6, 1948, by and between the Waterfront Employers Association of the Pacific Coast, Waterfront Employers Association of California, Waterfront Employers of Oregon and Columbia River, Waterfront Employers of Washington, hereinafter designated as the Employers, on behalf of their respective members, and the International Longshoremen's and Warehousemen's Union, hereinafter designated as the Union.

Witnesseth:

This Agreement shall become effective on December 6, 1948, and shall remain in effect, unless terminated in accordance with other provisions in the agreement, or unless the termination date is extended by mutual agreement, until and including June 15, 1951, and shall be deemed renewed thereafter from year to year unless either party gives written notice to the other of a desire to modify or terminate the same, said notice to be given at least sixty (60) days prior to the expiration date. Negotiations shall commence within ten (10) days after the giving of such notice.

Section 7

Hiring Hall, Registration and Preference

(a) Hiring Hall

(1) The hiring of all longshoremen shall be through halls maintained and operated jointly by the International Longshoremen's and Warehousemen's Union and the respective Employers Associations. The hiring and dispatching of all longshoremen shall be through one central hiring hall in each of the ports, with such branch halls as shall be mutually agreed upon in accord with provisions of Section 14 (c). All expense of the dispatching halls shall be borne one-half by the International Longshoremen's and Warehousemen's Union and one-half by the Employers.

(2) Each longshoreman registered at any hiring hall who is not a member of the International

Longshoremen's and Warehousemen's Union shall pay to the Union toward the support of the hall a sum equal to the pro rata share of the expense of the support of the hall paid by each member of the Union.

(3) Non-Association employers shall be permitted to use the hiring hall only if they pay to the Association for the support of the hiring hall the equivalent of the dues and assessments paid by Association members. Such non-member employer shall have no preference in the allocation of men, but when there are not sufficient men available to handle all the needs of the port shall be allocated men on the same basis as men are allocated to Association members.

(b) Hiring Hall Personnel

(1) The personnel for each hiring hall, with the exception of Dispatchers, shall be determined and appointed by the Labor Relations Committee of the port. Dispatchers shall be selected by the Union through elections in which all candidates shall qualify according to standards prescribed and measured by the Labor Relations Committee of the port. If they fail to agree on the appropriate standards or on whether a candidate is qualified under the standards, the dispute shall be decided in accord with provisions of Section 14 (a). The standards for Dispatchers shall be uniform among the several ports insofar as possible.

(2) All Dispatchers hereafter elected shall be

permitted to hold office for the duration of this agreement, excepting only in those ports where dispatching is done on a part-time basis by a person holding union office and acting in a dual capacity.

Neither the constitution nor any rule of the Union or any of its locals shall abridge the foregoing provision.

(3) All personnel of the Hiring Hall, including Dispatchers, shall be governed by rules and regulations agreed upon by the Port Labor Relations Committee, and shall be removable for cause by the Port Labor Relations Committee.

(4) The employer, when desired, shall be permitted to maintain a representative in the Hiring Hall at all times.

(c) Registration

(1) The Port Labor Relations Committee in any port shall have control over registration lists in that port, including the power to make additions to or subtractions from the registration lists as may be necessary.

(2) When it becomes necessary to drop men from the registration list, seniority on the list shall prevail.

(3) Longshoremen not on the registration list shall not be dispatched from the hiring hall or employed by any employer while there is any man on the registered list qualified, ready and willing to do the work.

(d) Preference

Preference of employment shall be given to members of the International Longshoremen's and Warehousemen's Union whenever available. Preference applies both in making additions to the registration list and in dispatching men to jobs. This section shall not deprive the Employers' members of the Labor Relations Committee of the right to object to unsatisfactory men (giving reasons therefore) in making additions to the registration list, and shall not interfere with the making of appropriate dispatching rules.

Admitted April 19, 1949.

Mr. Hilton: I should like to offer in evidence as General Counsel's Exhibit No. 73 the Agreement signed between the International Longshoremen's and Warehousemen's Union and the Waterfront Employers Association of the Pacific Coast, which is commonly referred to as the Coast Agreement covering the ships clerks. On the face of the exhibit there is a letter containing typed signatures of representatives of the Waterfront Employers Association of the Pacific Coast, and typed signatures of representatives of the Union designated as the Ship Clerks Committee for International Longshoremen's and Warehousemen's Union. The face sheet is dated January 17, 1949.

Like the previous exhibit, Mr. Holmes, at my request, submitted this copy to me, and it is my

understanding that it is a true and correct copy of the original agreement which was entered into between these parties, and that the typed signatures of each of the parties appearing on the face sheet were actually signed by each of the parties on the original agreement.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 73 for identification.)

Trial Examiner Rogosin: General Counsel's Exhibit 73 for identification may be received subject to the same reservation as General Counsel's Exhibit 72.

Mr. Leonard: Thank you. [2452]

(The document heretofore marked General Counsel's Exhibit No. 73 for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 73

Ship Clerks Master Agreement

The International Longshoremen's and Warehousemen's Union, acting on behalf of the Marine Clerks Association Local 63; Ship Clerks Association Local 34; Super-Cargoes and Checkers Union Local 40; ILWU Local 46, hereinafter designated as the Union, and The Waterfront Employers Association of the Pacific Coast on behalf of the Waterfront Employers Association of California and the Waterfront Employers of Oregon and

Columbia River, hereinafter designated as the Employers, hereby agree as follows:

Section 1:

This agreement as supplemented by agreements for the various port areas covered hereby shall constitute the collective bargaining agreement between the parties hereto.

Section 2—Coverage:

(a) The provisions of this agreement shall apply to all employees who are employed by members of the Employers Associations to spot* cargo on piers or terminals from land or water carriers, receive, deliver, check the loading or discharging of cargo to or from marine terminals (including piers and wharves**) or vessels in Oregon and Columbia River, San Francisco Bay Area, Hueneme, Los Angeles-Long Beach Harbor and San Diego. Executives as defined in port supplements are not subject to the provisions of this agreement.

(b) The job classifications covered by this agreement are herein set forth in the respective port agreements under the subheading "Classifications."

(c) If any employer shall hereafter sub-contract work covered by this agreement, provision shall be made for the observance of this agreement.

Section 3—Preference of Employment:

Preference of employment shall be given to mem-

*In Oregon and Columbia River Port Area: (to spot and weight).

**In San Francisco Bay Area only: (piers, wharves and grain elevators).

bers of the Union. (Registration shall continue on a portwide basis as provided in Section 17 of this agreement.)

Admitted April 19, 1949.

* * *

Mr. Hilton: Now, as General Counsel's Exhibit 73 (a) I would like to offer in evidence the Port Supplementary Agreement covering the Los Angeles-Long Beach area which bears the typed signature of representatives of the Water Employers Association of California and the Marine Clerks Association, Local 1-63, ILWU. Again I have been advised that this is a true and correct copy of the Clerks Supplementary Agreement by Mr. Holmes, and that the typed signatures appearing on Page 8 of the agreement were actually signed by each of the parties on the original [2453] agreement.

* * *

Trial Examiner Rogosin: Do you have a date for that agreement, or is the date appearing on the last page intended as the date?

Mr. Hilton: The date is stated in the agreement, executed on the 11th day of March, 1949. [2454]

* * *

Mr. Hilton: I should also like to offer in evidence as General Counsel's Exhibit No. 73(b) the Port Supplement and Working Rules covering Checkers, Supervisors, and Supercargoes at Portland, Oregon. Like the other exhibits I have been

furnished this exhibit by Mr. Holmes, and I have been assured, or I have been informed that it is a true and correct copy of the original agreement that was entered into between these parties. This Port Supplement was executed on the 25th day of March, 1949, and was executed on behalf of the Waterfront Employers of Oregon and Columbia River and the Supercargoes and Checkers, International Longshoremen's and Warehousemen's Union, Local 40. The exhibit contains the typed signatures, or the typed names of the representatives of each of the associations, and I have been informed that each of the individuals signed the original agreement. [2456]

* * *

Trial Examiner Rogosin: General Counsel's Exhibit 73(b) for identification may be received and so marked subject to the objections stated by counsel for Respondent.

(The document heretofore marked General Counsel's Exhibit No. 73(b) for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT 73-B

Port Supplement Agreement
and Working RulesCheckers, Supervisors, and Supercargoes
Portland, Oregon

Effective—March 28, 1949

Section 1. Classifications.

The provisions of this supplemental agreement shall apply to all employees who are employed by members of the Association and shall apply to hourly and monthly checkers, supervisors and supercargoes. (Note: Exception—Where provisions do not apply to supervisors or supercargoes it is so stated.)

Section 2. Definitions.

(a) Checkers: A checker is an employee who receives, delivers, checks, spots, or weighs cargo to or from marine terminals, including piers, wharves or ships. (Basic agreement, Section 2(a).)

(b) Supervisor: A supervisor is an employee who is assigned regularly to the direction or supervision of the work of other checkers, but who may be assigned to the work covered by this agreement, as incidental to his other duties.

(c) Supercargoes: A supercargo is an employee who supervises the loading and/or discharging operations of a vessel. A supercargo is the direct representative of the employer and in conjunction with

other representatives of the employer, is responsible for the safe, efficient and proper handling of cargo and shall have the authority to hire, supervise, place and/or discharge men, and shall perform his duties in accordance with the orders of his employer. A supercargo's duties do not require him to do the work of checkers or supervisors except as incidental to his other duties.

(1) **Checker-Supercargo:** A checker-supercargo is an employee who has been so registered by the Labor Relations Committee as qualified to be employed in either the capacity of a checker or as a supercargo.

(2) There shall be no specified meal hours for men working as supercargoes.

Section 7 (b) of the Basic Agreement shall not apply to supercargoes but it shall be the practice that supercargoes shall not be required to work over five hours without an opportunity to eat except in emergency. There shall be no deduction for lost time other than a meal time.

There shall be no monthly limitation of hours for hourly supercargoes who are registered as straight supercargoes.

One hundred and seventy-three hours shall constitute a month's work for Monthly Supercargoes. More hours may be worked subject to the regulation of the Joint L. R. C. Any hours worked (exclusive of travel time) beyond the 173 hours per calendar month, shall be paid at the prevailing hourly rate of pay.

No supercargo shall work more than 12 hours in any one shift. (This shall not apply when vessel is shifting or sailing or when a vessel continues to work and no replacements are available in the port.)

Section 11 (2) of the Basic Agreement shall not apply to men working as supercargoes. (Work in excess of 11 hours and starting before 7:00 a.m.)

The 1000 hour clause shall not apply to supervisors or supercargoes who receive a guaranteed salary.

(d) Executives: An executive is an employee who is in responsible charge of a vessel, pier, wharf or terminal or a major department thereof in respect to the work covered by this agreement, and duties do not require him to do the work covered herein.

Section 3. Union Preference:—(See Sec 3. Basic)

This section shall not deprive the members of the Joint Labor Relations Committee of their right to object to unsatisfactory men in making additions to the registration list and shall not interfere with the power of the Joint Labor Relations Committee to make appropriate dispatching rules. Registered or permit men may be nominated by either party to this agreement.

Admitted April 19, 1949.

Mr. Hilton: You will note that I am not offering the supplement covering the clerks for the Port of San Francisco. I have been informed that no

such agreement has been executed as of this day covering the clerks in the Port of San Francisco.

Trial Examiner Rogosin: Can there be a matter of stipulation so that the record will be clear on that point?

Mr. Holmes: That is true.

Mr. Leonard: As far as I know that is correct. I am perfectly willing to so stipulate, subject to my calling to the Trial Examiner's attention any error or inaccuracy before the hearing closes if such a matter should be brought to my attention.

Trial Examiner Rogosin: Very well. That is the Ship Clerks of the San Francisco Port?

Mr. Holmes: Port Supplement of San Francisco.

Mr. Hilton: Port Supplement. [2457]

* * *

Mr. Hilton: If the Examiner please, counsel have agreed to stipulate certain facts in lieu of calling witnesses who are present here this morning to testify in respect thereto. One: Counsel have agreed that for the purpose of this proceeding, representatives of the ILWU and the Waterfront Employers' Association reached agreement, in principle, about November 25, on the terms of the agreements which have been received in evidence as General Counsel's Exhibits Nos. 72 and 73, that is, both the Coastwise Longshore Contract, and the Coastwise Clerks Contract.

Thereafter, on December 6th, the pickets were withdrawn, and the men, both the longshoremen,

and the clerks, returned to work. Is that correct, insofar as the agreements are concerned?

Mr. Leonard: That is correct, with one minor correction. The picketing actually ceased about December 2 or 3—sort of petered out. The men did return to work on December 6th.

Mr. Hilton: At least, by December 6th, the pickets had been withdrawn, and the men returned.

Mr. Leonard: Actually, the pickets started to cease picketing prior to December 6th, and after November 25th.

Mr. Hilton: Now, counsel have also stipulated for the purposes of this proceeding, that the registration, hiring, [2462] and dispatching procedures on and after December 6, 1948, are substantially the same as the procedures in existence prior to the strike, which took place on September 2, 1948. Is that correct?

Mr. Leonard: That is correct.

Trial Examiner Rogosin: Does that conclude that stipulation?

Mr. Hilton: That concludes the stipulation.

Mr. Holmes: I join in the stipulation.

Trial Examiner Rogosin: It may be so stipulated.

* * *

Received May 4, 1949. [2463]

[Title of Board and Cause.]

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, as amended hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, “In the Matter of International Longshoremen’s and Warehousemen’s Union, affiliated with the Congress of Industrial Organizations and Waterfront Employers Association of the Pacific Coast” and “In the Matter of International Longshoremen’s and Warehousemen’s Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34 and Local 34; Marine Clerks Association, Local 1-63, and Supercargoes and Checkers Union, Local 40, each affiliated with International Longshoremen’s and Warehousemen’s Union, C.I.O., and Waterfront Employers Association of the Pacific Coast,” the same being known as Cases Nos. 20-CB-19 and 20-CB-38 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said consolidated proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating Irving Rogosin Trial Examiner for the National Labor Relations Board dated September 1, 1948.

(2) Stenographic transcript of testimony taken before Trial Examiner Rogosin on September 1, 2, 3, 7, 15, 16, 20, 21, 22, 23, 24, 27, 28, 29, 30, 1948, October 25, 26, 27, and 28, 1948, together with all exhibits introduced in evidence, also all rejected exhibits.

(3) Charging party's letter, dated October 8, 1948, opposing Respondents' request for special permission to appeal. (Respondents' request for special permission to appeal is General Counsel's Exhibit No. 1-K, found in Volume V of certified record.)

(4) General Counsel's request for extension of time for filing brief before the Trial Examiner dated November 15, 1948.

(5) Copy of Chief Trial Examiner's telegram dated November 16, 1948, granting all parties extension of time for filing briefs before the Trial Examiner.

(6) Respondents' telegram, dated November 30, 1948, requesting further extension of time for filing brief before the Trial Examiner.

(7) Copy of Chief Trial Examiner's telegram dated December 1, 1948, granting all parties further extension of time for filing briefs.

(8) General Counsel's motion for leave to re-open record, dated February 9, 1949, for the purpose of receiving in evidence the motion for leave to amend complaint accompanied by the proposed

amendment and to adduce additional evidence relating to the negotiation, execution, performance and operation of certain agreements, set forth in said motion for leave to amend.

(9) General Counsel's motion for leave to amend complaint and amendment, dated February 9, 1949, together with affidavit of service and United States Post Office return receipts thereof.

(10) Trial Examiner's order to show cause why said motion should not be granted, the hearing reopened, the motion to amend, and amendment, be allowed, and an opportunity afforded said parties to adduce additional evidence relating to the issues raised by said amendment, dated February 16, 1949, together with affidavit of service and United States Post Office return receipts thereof.

(11) Respondents' letter, received February 16, 1949, requesting still further extension of time for filing brief before the Trial Examiner.

(12) Copy of Chief Trial Examiner's telegram, dated February 16, 1949, granting all parties still further extension of time for filing briefs.

(13) Trial Examiner's order reopening hearing, granting motion to amend complaint, and setting date for reconvening hearing, dated March 9, 1949, together with affidavit of service and United States Post Office return receipts thereof.

(14) Respondents' answer to amendment to complaint, dated March 14, 1949.

(15) Respondents' supplement motion to dis-

miss amendment to the complaint, dated March 14, 1949.

(16) Respondents' telegram dated March 15, 1949, requesting further postponement of hearing date.

(17) Copy of Trial Examiner's telegram, dated March 18, 1949, denying Respondents' request for further postponement of hearing date.

(18) Copy of Trial Examiner's telegram, dated March 31, 1949, postponing time for reopened hearing.

(19) Copy of Trial Examiner's telegram, dated April 11, 1949, further postponing time for reopened hearing.

(20) Stenographic transcript of testimony taken before Trial Examiner Rogosin in reopened hearing on April 20 and 21, 1949, together with all exhibits introduced in evidence, also all rejected exhibits. (Transcript attached to Volume IV of the certified record.)

(21) Respondents' request for special permission to appeal directly to Board from rulings of the Trial Examiner refusing to consent to a withdrawal of charges and from rulings of the Trial Examiner denying Respondents' motions to dismiss received May 3, 1949.

(22) General Counsel's opposition to Respondents' request for special permission to appeal to Board, dated May 5, 1949.

(23) General Counsel's request for still further extension of time for filing brief before the Trial Examiner, dated May 9, 1949.

(24) Board's order, denying Respondents' request for special permission to appeal directly to the Board, dated May 17, 1949, together with affidavit of service and United States Post Office return receipts thereof.

(25) Copy of Trial Examiner Rogosin's Intermediate Report, dated November 30, 1949, (annexed to item 35 hereof); order transferring case to the Board, dated November 30, 1949, together with affidavit of service and United States Post Office return receipts thereof.

(26) Respondents' telegram, dated December 12, 1949, requesting extension of time for filing exceptions and brief, also requesting permission to argue orally before the Board. (Respondents' request for oral argument denied, see Board's Decision and Order dated July 20, 1950, Page 2.)

(27) Copy of Board's telegram, dated December 12, 1949, granting all parties extension of time for filing exceptions and briefs.

(28) Respondents' telegram, dated December 29, 1949, requesting further extension of time for filing exceptions and brief.

(29) Copy of Board's telegram, dated December 30, 1949, granting all parties extension of time for filing exceptions.

(30) General Counsel's exceptions to the Intermediate Report received January 3, 1950, together with affidavit of service and United States Post Office return receipts thereof.

(31) Respondents' exceptions to the Intermediate Report, received January 9, 1950.

(32) Respondents' telegram, dated January 11,

1950, requesting still further extension of time for filing brief.

(33) Copy of Board's telegram, dated January 17, 1950, granting all parties still further extension of time for filing briefs.

(34) Respondents' motion to reopen record, received January 19, 1950. (Denied, see Board's Decision and Order, dated July 20, 1950, page 2, footnote 2.)

(35) Copy of Board's Decision and Order, dated July 20, 1950, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 16th day of April, 1951.

[Seal] /s/ FRANK M. KLEILER,

Executive Secretary, National
Labor Relations Board.

[Endorsed]: No. 12907. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. International Longshoremen's & Warehousemen's Union, Affiliated With the Congress of Industrial Organizations; International Longshoremen's and Warehousemen's Union, District No. 1, Acting on Behalf of Ship Clerks Association, Local 34 and Local 34; Marine Clerks Association Local, 1-63 and Supercargoes and Checkers Union, Local 40, Each Affiliated With the International Longshoremen's & Warehousemen's Union, C.I.O., Respondents. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed April 20, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12907

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, AFFILI-
ATED WITH THE CONGRESS OF
INDUSTRIAL ORGANIZATIONS; INTER-
NATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, DISTRICT
No. 1, Acting on Behalf of SHIP CLERKS
ASSOCIATION, LOCAL 34, and LOCAL 34
MARINE CLERKS ASSOCIATION, LOCAL
1-63; and SUPERCARGOES AND CHECK-
ERS UNION, LOCAL 40, Each Affiliated
With the INTERNATIONAL LONGSHORE-
MEN'S AND WAREHOUSEMEN'S UNION
C.I.O.,

Respondents.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant
to the National Labor Relations Act, as amended
(61 Stat. 136, 29 U.S.C., Supp. III, Secs. 151

et seq.) hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondents, International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations; International Longshoremen's and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local 1-63, and Supercargoes and Checkers Union, Local 40, each affiliated with International Longshoremen's and Warehousemen's Union, C.I.O., their officers, representatives, agents, successors, and assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "In the Matter of International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations and Waterfront Employers Association of the Pacific Coast, Case No. 20-CB-19," and "In the Matter of International Longshoremen's and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34 and Local 34; Marine Clerks Association, Local 1-63, and Supercargoes and Checkers Union, Local 40, each affiliated with International Longshoremen's and Warehousemen's Union, C.I.O., and Waterfront Employers Association of the Pacific Coast, Case No. 20-CB-38."

In support of this petition the Board respectfully shows:

(1) Respondents are labor organizations engaged in promoting and protecting the interests of

their members in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on July 20, 1950, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondents, their officers, representatives, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations; International Longshoremen and Warehousemen's Union, District No. 1, acting on behalf of Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local 1-63, and Supercargoes and Checkers Union, Local 40, each affiliated with International Longshoremen's and Warehousemen's Union, C.I.O., their officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Giving effect to those provisions of the collective bargaining contracts between the Respondents and the Waterfront Employers Association of the Pacific Coast, on behalf of itself, Waterfront Employers Association of California, and Waterfront Employers of Oregon and Columbia River, and their respective members or successors, which grant preference in employment to members of any of the Respondents;

(b) In any like or related manner causing or attempting to cause the Employers to discriminate against employees in violation of Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post in conspicuous places copies of the notice attached hereto, marked Appendix A,¹¹ at all places where notices to members are customarily posted. Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondents' representatives, be posted by the Respondents immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken by them to insure

¹¹In the event that this Order is enforced by decree of a United States Court of Appeals there shall be inserted before the words: "A Decision and Order," the words: "A Decree of the United States Court of Appeals Enforcing."

that said notices are not altered, defaced, or covered by any other material;

(b) Furnish the Regional Director for the Twentieth Region signed copies of the form of notice attached hereto as Appendix A, for posting, with the consent of the Employers, on bulletin boards at their offices, and in all other places where notices are customarily posted by said Employers. The notices shall be posted for a period of sixty (60) consecutive days thereafter. Copies of said notices, to be furnished by the Regional Director for the Twentieth Region, shall, after being signed as provided in paragraph 2 (a) hereof, be forthwith returned to the Regional Director for said posting;

(c) Notify the Regional Director for the Twentieth Region, in writing within ten (10) days from the date of this Order what steps the Respondents have taken to comply herewith.

(3) On July 20, 1950, the Board's Decision and Order was served upon Respondents by sending copies thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the consolidated proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable

Court that it cause notice of the filing of this petition and transcript to be served upon Respondents that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondents, their officers, representatives, agents, successors, and assigns to comply therewith.

NATIONAL LABOR
RELATIONS BOARD,

By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C., this 16th day of April, 1951.

APPENDIX A

Notice to All Officers, Representatives, Agents, and Members of International Longshoremen's and Warehousemen's Union; International Longshoremen's and Warehousemen's Union, District No. 1; Ship Clerks Association, Local 34, and Local 34; Marine Clerks Association, Local 1-63; and Supercargoes and Checkers Union, Local 40, Each Affiliated With International Longshoremen's and Warehousemen's Union, Affiliated with the Congress of Industrial Organizations

PURSUANT TO A DECISION AND ORDER of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not give effect to those provisions of the collective bargaining contracts between the above unions and the Waterfront Employers Association of the Pacific Coast, on behalf of itself, and the other Regional Associations, the said Regional Associations, and their respective members, which grant preference of employment to members in the said unions or any of them.

We Will Not in any like or related manner cause, or attempt to cause, the Employers or their successors, to discriminate against employees in violation of Section 8(a) (3) of the Act.

Dated

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, CIO,

By,
(Representative) (Title)

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, DISTRICT
NO. 1,

By,
(Representative) (Title)

SHIP CLERKS ASSOCIA-
TION, LOCAL 34

By ,
(Representative) (Title)

MARINE CLERKS ASSOCIA-
TION, LOCAL 1-63,

By ,
(Representative) (Title)

SUPERCARGOES AND CHECKERS UNION,
LOCAL,

By ,
(Representative) (Title)

This notice must remain posted for 60 days from
the date hereof, and must not be altered, defaced,
or covered by any other material.

[Endorsed]: Filed April 20, 1951.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD, AND PETITION FOR REVIEW OF SAID ORDER

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

Come now the respondents above named and in answer to the petition for enforcement of an order of the National Labor Relations Board heretofore filed in the above-entitled matter by said Board, allege as follows:

1. Respondents admit that they are labor organizations engaged in promoting and protecting the interests of their membership in the State of California and within this judicial circuit.

2. Respondents admit that there was conducted before the National Labor Relations Board a consolidated proceeding styled and captioned as in the said petition alleged.

3. Respondents admit that upon all the proceedings had in said matter before the said Board, the Board on July 20, 1950, did make its order as in the said petition alleged.

4. Respondents admit that copies of said order were served upon respondents as in said petition alleged.

5. Respondents deny that they have committed

any unfair labor practices, either as in the said petition, order and proceedings alleged, or otherwise.

6. Respondents allege that there is no substantial evidence, or any evidence, to support the findings made and order issued by the Board in the aforesaid proceeding.

As and for a Further Answer to the Aforesaid Petition, and by Way of Cross-Petition for Review of the Aforesaid Order, respondents allege as follows:

1. That the aforesaid proceedings before the Board were instituted by the filing of a charge on June 10, 1948, and an amended charge on August 10, 1948; that thereafter, no other or further or amended charges were ever filed in the said proceedings and that the aforesaid charges of June 10, 1948, and August 20, 1948, true and correct copies of which have been certified to this Court by the National Labor Relations Board, petitioner herein, were and are the only charges ever filed in these proceedings.

2. That neither of the aforesaid charges alleged, charged, or complained that the respondents had or have violated the National Labor Relations Act, as amended, or any section thereof, by the alleged execution and alleged enforcement of collective bargaining contracts allegedly granting preference of employment to members of the respondents; that on the contrary the said charges and each of them

alleged, charged, and complained that the respondents were in violation of the said Act by refusing to bargain in good faith with the charging parties.

3. That the Board's Trial Examiner specifically found, on all of the evidence before him, that the respondents did not refuse and never had refused to bargain in good faith with the charging parties; that no exceptions were ever taken to said findings by any of the parties to the aforesaid proceedings and that the Board adopted the said findings and made them its own.

4. That despite the fact that no charge was ever filed concerning the alleged execution or enforcement of collective bargaining contracts allegedly granting preference of employment to members of the respondents, the Board made findings and issued an order against the respondents as though a charge or charges were or had been filed relating thereto. Objections to said procedure and to the making of such findings and order were urged by the respondents in the proceedings before the Trial Examiner and the Board.

5. The finding of the Board and the order based thereon relating to matters which were not the subject of any charge filed against the respondents was and is contrary to and in violation of the National Labor Relations Act, as amended, and particularly Section 10(b) thereof; was and is a denial to the respondents of due process of law; and did and does deprive respondents of valuable property rights, to wit: contractual rights for and on behalf of their members, without due process of law.

Wherefore, respondents pray that the petition for enforcement of an order of the National Labor Relations Board be denied and that, upon respondents' petition for review of said order, said order be vacated and set aside.

GLADSTEIN, ANDERSEN &
LEONARD,

By /s/ NORMAN LEONARD,
Attorneys for Respondents.

State of California,
City and County of San Francisco—ss.

Norman Leonard, being first duly sworn, deposes and says: That he is one of the attorneys for respondents in the within action; that he makes this verification for and on behalf of said respondents, as such attorney; that he has read the foregoing answer and petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information or belief, and as to such matters that he believes it to be true.

/s/ NORMAN LEONARD.

Subscribed and sworn to before me this 15th day of May, 1951.

[Seal] /s/ PEASE STOCKWELL,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires January 14, 1953.

[Endorsed]: Filed May 16, 1951.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
PETITIONER INTENDS TO RELY

In this proceeding petitioner, National Labor Relations Board, will urge and rely upon the following point:

The Board properly found that respondents, by entering into and participating in the enforcement of a contract containing a provision which requires that hiring preference be given to respondents' members, violated Section 8 (b) (2) of the Act in that they caused the employers to discriminate respecting their employees' membership or non-membership in a labor organization.

Dated at Washington, D. C., this 16th day of April, 1951.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

[Endorsed]: Filed April 20, 1951.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America

To: International Longshoremen's & Warehousemen's Union, CIO, San Francisco, Calif., International Longshoremen's & Warehousemen's Union, District No. 1, CIO, San Francisco, and Waterfront Employers Association of the Pacific Coast, Att.: Mr. Henry W. Clark, 16 California Street, San Francisco, California

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 20th day of April, 1951, a petition of the National Labor Relations Board for enforcement of its order entered on July 20, 1950, in a proceeding known upon the records of the said Board as

“In the Matter of International Longshoremen's & Warehousemen's Union, affiliated with the Congress of Industrial Organizations and Waterfront Employers Association of the Pacific Coast Case No. 20-CB-19, and In the Matter of International Longshoremen's & Warehousemen's Union, District No. 1, etc., CIO and Waterfront Employers Ass'n of the Pacific Coast, Case No. 20-CB-38”

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 20th day of April in the year of our Lord one thousand, nine hundred and fifty.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

Returns on Service of Writ attached.

Received April 25, 1951, U. S. Marshal.

[Endorsed]: Filed May 9, 1951.